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Floor Debate
February 02, 2012

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SENATOR COASH PRESIDING

SENATOR COASH: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twentieth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Pastor Bob Lawrence of Auburn Church of Christ, Senator Heidemann's district. Please rise.

PASTOR LAWRENCE: (Prayer offered.)

SENATOR COASH: Thank you, Pastor Lawrence. I call to order the twentieth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Enrollment and Review reports LB507 and LB40 to Select File, both having Enrollment and Review amendments attached. The Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB1018 and LB1064 to General File. Senator Campbell, as Chair of Health and Human Services, reports LB773 to General File with amendments attached. Hearing notice for the Banking, Commerce and Insurance Committee. And I have two gubernatorial appointments to the Board of Emergency Medical Services and the second appointment to the Commission for the Deaf and Hard of Hearing. That's all that I have, Mr. President. (Legislative Journal pages 405-411.) [LB507 LB40 LB1018 LB1064 LB773]

SENATOR COASH: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda.

CLERK: Mr. President, LB946, Select File. Senator Larson, I have Enrollment and Review amendments. (ER156, Legislative Journal page 387.) [LB946]

SENATOR COASH: Senator Larson for a motion. [LB946]

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SENATOR LARSON: Mr. President, I move that the E&R amendments to LB946 be adopted. [LB946]

SENATOR COASH: You've heard the motion. All those in favor say aye. The motion is adopted. [LB946]

CLERK: Mr. President, Senator Adams would move to amend with AM1828. (Legislative Journal pages 411-416.) [LB946]

SENATOR COASH: Senator Adams, you're recognized to open on your amendment, AM1828. [LB946]

SENATOR ADAMS: Thank you, Mr. President. Members, this community college aid bill that we talked about earlier this week, in closing I indicated to you we would be coming forward on Select File with some technical style amendments, and this is it. And at its basis, what we are doing here is DAS and the Fiscal Office have come to me and said there is some wording changes that we'd like to make in this bill. And to keep it as simple as I can, in a rather lengthy bill, the essence of it is this. If you recall from Monday we create the Program 99 money, which is like bonus or award money, grant money that would go out to the colleges. And we establish a review board. In reality, that Program 99 already exists in statute. What we did in the community...what we're doing in the community college bill is changing the staffing of that review committee. In this amendment what we're doing is taking DAS out of it, taking them out of it. Currently, the way that the Program 99 Fund would work is that the review committee would review and make recommendations for grants to DAS; DAS would have the final say and then certify the appropriation. DAS wants to be out of the picture. I see no reason for them to be in the picture. So what we do, very simply, is the review committee that reviews the grant proposals, they will be the decider of who gets the grants, rather than DAS, and the Coordinating Commission will be the certifier. The other thing we're doing in this amendment, community colleges have a capital fund and they have an environmental hazard fund. We are clarifying in language that it is the capital fund, if it is tax supported, that the programs can be reviewed by the Coordinating Commission, not the environmental hazard programs. Those are not reviewable by the Coordinating Commission. And we're just clarifying that line of division. That's the essence of the amendment to LB946. Thank you, Mr. President. [LB946]

SENATOR COASH: Thank you, Senator Adams. (Visitors introduced.) There are no requests to speak. Senator Adams will waive closing. The question is, shall AM1828 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB946]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the amendment as offered by Senator Adams. [LB946]

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SENATOR COASH: The amendment is adopted. [LB946]

CLERK: I have nothing further on the bill, Mr. President. [LB946]

SENATOR COASH: Senator Larson for a motion. [LB946]

SENATOR LARSON: Mr. President, I move that LB946 be advanced to E&R for engrossing. [LB946]

SENATOR COASH: You've heard the motion. All those in favor say aye. It is advanced. Mr. Clerk. [LB946]

CLERK: Mr. President, LB677 on General File, a bill originally introduced by Senator Lathrop. It's a bill for an act relating to crimes and offenses. It provides penalties for assault on a healthcare provider. The bill was introduced in January of last year, referred to the Judiciary Committee. Senator Lathrop presented his bill yesterday. Senator Ashford opened on the committee amendments. At this time the committee amendments are pending, Mr. President. (AM1704, Legislative Journal page 306.) [LB677]

SENATOR COASH: Thank you, Mr. Clerk. Senator Lathrop, would you please give us a brief recap of LB677? [LB677]

SENATOR LATHROP: I'd be happy to. And thank you, Mr. President and colleagues, good morning. LB677 is very simple in its...in your ability to understand what we're trying to accomplish, and it's this simple. The bill addresses assaults in the workplace for healthcare professionals that are licensed and certified. It is a...addresses a growing problem in our emergency rooms, in our hospitals, and in our clinics, which is the presence of assaults on healthcare providers. The bill addresses it by requiring mandatory jail time for those who commit various forms of assault. I will be clear that it does not change...it does not change the elements of an assault, it merely addresses the proper punishment for these individuals who assault defenseless healthcare providers. Thank you. [LB677]

SENATOR COASH: Thank you, Senator Lathrop. Senator Ashford, would you please give us an update on the amendment. Senator Ashford, if you'd give us a brief recap of the Judiciary Committee amendment. [LB677]

SENATOR ASHFORD: Thank you, Mister...I'm sorry that I was outside of the Chamber. The committee amendment, as we discussed yesterday, provides for this notice to be posted in the healthcare facility that really warns anybody that is in the premises that if they attack a healthcare professional as defined in the amendment that...doctors,

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nurses, that they would be subject to a mandatory penalty. The other part of the amendment conforms the language or the definitions of healthcare professional and healthcare facility to current law. So, otherwise the...as...what Senator Lathrop has described as the...is essentially the substance of the bill with the amendment. Thank you. [LB677]

SENATOR COASH: Thank you, Senator Ashford. Mr. Clerk for an announcement.

CLERK: Mr. President, Urban Affairs will have an Executive Session, north balcony, now; Urban Affairs, Executive Session, north balcony immediately. Thank you.

SENATOR COASH: Thank you, Mr. Clerk. Members, you've heard the opening to LB677 and the Judiciary Committee amendment. Those wishing to speak: Senators Dubas, Wightman, Lathrop, and Council. Senator Dubas, you are recognized. [LB677]

SENATOR DUBAS: Thank you very much, Mr. President. Good morning, colleagues. I think what I was hearing yesterday was why is it that we should set these particular professionals apart from anybody who works in the healthcare profession. And I guess I would like to ask Senator Lathrop a question if he would yield. [LB677]

SENATOR COASH: Senator Lathrop, will you yield? [LB677]

SENATOR LATHROP: I'd be happy to. [LB677]

SENATOR DUBAS: Thank you, Senator Lathrop. Just, you know, the types of professionals that we're dealing with, I believe there are certain oaths that they have to take before they are able to go out and do their job and the environment that they work in, I believe, is not real selective as to who they get to take care of and who they don't. So would that be, probably, a very compelling reason as to why we would set these professionals apart versus other types of employees? [LB677]

SENATOR LATHROP: Senator Dubas, thanks for the question. The fact of the matter is is that if you operate a hospital in this country, you can't turn somebody down. If somebody shows up in your emergency room, you have a responsibility under federal law to take them in and to provide them with care. And that is one of the reasons that violent people have access to the healthcare provider, many of them come to the emergency room; some of them after a shooting or after one kind of a stressful event or another and they arrive at the hospital. Those doctors and nurses can't say, you know what, we don't want the fight that's coming when you get into our emergency room or the fight that's going to follow you in here. They have to take them. And that makes healthcare providers, particularly in the hospital setting, particularly vulnerable. And there are statistics that suggest that...from the Bureau of Labor Statistics, that there...that a healthcare worker is twice as likely as those in other fields to experience

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an injury from a violent act. So we haven't chosen healthcare professionals for an illogical reason or for no reason. They are particularly subject to violent attacks. And there are two reasons, one is, as you suggest, they can't turn people down in the emergency room. They have to take these people in. And a lot of these assaults are happening on emergency room physicians, doctors, nurses, and, I suppose, x-ray techs, people that are involved in the care of folks that come to the ER. And that's why we've chosen this special protection for healthcare providers and why I think it's so important. So thank you for the question. [LB677]

SENATOR DUBAS: Thank you very much, Senator Lathrop. I think that's...you know, what he just outlined is so true. For most of us, if we feel like there's any chance of harm or we're walking into a situation where we might be a little nervous or apprehensive, we have the ability to say...remove ourselves from that situation or say I don't think I'm going to go there. But by virtue of the oath that these professionals take as far as treating people no matter what the circumstance and the environment that they're in, that no hospital can turn away people, they don't have that luxury, if that's what you want to call it, of saying I don't think I'm going to put myself into that situation. They are, by nature of the profession that they've chosen and the oath that they've taken, required to put any concern for their own personal safety aside and go in and deliver the services that they are obligated to deliver. So, I think, yes, we are giving these people special consideration, but I think by virtue of the environment that they work in and the oath that they have taken, they deserve this type of special consideration. And for that reason I support the amendment and I support the bill also. If Senator Lathrop would like the remainder of my time, he is certainly welcomed to it. [LB677]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator Lathrop, a minute 14 seconds. [LB677]

SENATOR LATHROP: Thank you. Thank you, Senator Dubas, I appreciate that and your comments. Colleagues, there is some misunderstanding regarding this bill and I want to clarify it and I think I can do it in the minute that I have. This bill does not change the elements of an assault. It does...let me say it again, this bill does not change the elements of an assault. It just provides that if you assault a healthcare worker, there is a mandatory jail time. That's as simple as it gets. So you may have people that have suggested to you, well, what about this and what about the person that does this, are they going to be charged now when they weren't before? You probably won't see anybody charged who wouldn't have been charged before because the elements of this assault do not change. But the people who are doing these terrible things to healthcare workers will receive jail time. And it will discourage them and so will the notice that's required to be posted. It will tell them, like driving through a construction zone, this is not the place to speed; well, this is not the place to assault a healthcare worker. [LB677]

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SENATOR LANGEMEIER: Time. [LB677]

SENATOR LATHROP: Thank you. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Dubas. (Doctor of the day introduced.) Returning to discussion on LB677 and the committee amendments, those wishing to speak, we have Senators Wightman, Lathrop, Council, Gloor, Campbell, Harms, and others. Senator Wightman, you're recognized. [LB677]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. If Senator Lathrop would yield, I would have a few questions. [LB677]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB677]

SENATOR LATHROP: I'd be happy to. [LB677]

SENATOR WIGHTMAN: Senator Lathrop, you and I talked off the mike earlier this morning and I'd like some clarification on a couple of items. We talk about hospitals and healthcare clinics, can you tell me whether nursing homes would also be under this? [LB677]

SENATOR LATHROP: Senator Wightman, I would have to say that they would come under this if they qualified as a hospital or a health clinic and those definitions are referred to. We make reference to definitions of health clinic and to hospitals that are found in Chapter 71. [LB677]

SENATOR WIGHTMAN: And not many of them would, I assume, if that's the case, some place like Madonna that I know here in Lincoln and Omaha has one or two that might qualify as a hospital, but the average one out in outstate Nebraska and many of those in Omaha and Lincoln probably would not. Is that a correct statement? [LB677]

SENATOR LATHROP: I'll tell you what, after I get done talking to you I'll look at the definitions found in Chapter 71 for a health clinic and for a hospital. And then I'll share that with you off the mike if you'd like. [LB677]

SENATOR WIGHTMAN: Thank you. The other question I would have, and I think you've answered that in the answer to the first question and that is whether an assisted-living facility is in it? Would seem to me they would probably almost never qualify, would that be correct? [LB677]

SENATOR LATHROP: I'll look...as I said, I'll look at the definition, but I'd be surprised if an assisted-living facility would qualify. And I see Senator Gloor shaking his head, so I trust my former hospital administrator would have the answer to that. [LB677]

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SENATOR WIGHTMAN: Thank you. Thank you. The other question has to do with maybe people who would fit under the professional healthcare workers. There's no question in my mind that a registered nurse would; and I think there's no question that a licensed practical nurse would. A nurses aide, do you know the answer to that? And I know you weren't sure when we talked as to whether that has licensing or credentialing that would bring them under? [LB677]

SENATOR LATHROP: I believe they would, because they are certified. The CNA is a certified nurse assistant and because they are certified the definition of those brought under the umbrella of this statute are physicians or other healthcare practitioner who is licensed, certified or registered to perform specific health services. And I think that would include the CNA. [LB677]

SENATOR WIGHTMAN: Thank you. The only concern I have, and I probably will support the bill, but the only concern I have is that I think frequently when people...elderly people go into a nursing home facility and certainly...probably more likely when they go into assisted living, they don't go in there always under their own volition. Usually a family member, maybe under the direction of a court, has entered them into that facility; and some of them do in the first day or two have a lot of trouble adjusting and they may very well strike back at a worker. And I've been familiar with situations such as that. And that is a concern to me, because...and I truly believe you are probably right, Senator Lathrop, that those would not likely be prosecuted if they weren't before. But they could be. They would fit within the...for sure third-degree assault, and maybe even a second-degree assault sometimes, which is not the type of a violent assault that you are probably describing, but I do think they fit within it and could end up with a mandatory jail sentence. [LB677]

SENATOR LANGEMEIER: One minute. [LB677]

SENATOR WIGHTMAN: I'll yield what little time I have left to Senator Lathrop if he wants to respond to that. [LB677]

SENATOR LANGEMEIER: Senator Lathrop, 50 seconds. [LB677]

SENATOR LATHROP: Sure, and thank you, Senator Wightman, for a little bit of time to respond to that. I want to be very, very clear that this bill will not change who gets prosecuted. So that person who is removed to a nursing home and who assaults a CNA coming in to help them and let's say that they kick at them or something like that, which may go on, as you say, while they're making the adjustment or maybe while they're suffering from dementia, those people are not being prosecuted now. They wouldn't be prosecuted going forward because this bill does not change who will be prosecuted; it merely mandates a mandatory sentence. Thank you. [LB677]

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SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Wightman. Senator Council, you're recognized, followed by Senator Gloor. [LB677]

SENATOR COUNCIL: Yes, thank you, Mr. President. Again, I rise in opposition to LB677, as well as the amendment. And I trust that my friend and colleague, Senator Lathrop, and all of my other colleagues, understand and appreciate that I understand the situation that Senator Lathrop is seeking to address in this bill. But it does not remove the problems. And in fact, the problems present themselves, oftentimes, in the explanations given for the justification for this bill. For example, as Senator Dubas asked a question about an x-ray tech, well, certainly some x-ray technicians have to be credentialed, others do not. Senator Lathrop gave an example yesterday of someone being wheeled in a gurney and striking the person wheeling the gurney. More often than not, the person wheeling that gurney is not a credentialed individual. More often than not, that someone who is not a CNA, an RN, an LPN, yet we're going by this bill to create different classes of individuals in healthcare facilities. Someone took issue with the suggestion that I made yesterday about someone in housekeeping. Well, if you don't believe that occasions could present themselves where you have an unruly patient who is attacking an RN or an LPN, that the person who works in housekeeping isn't going to come try to render aid and assistance and under this bill the LPN or the RN, the perpetrator would be subject to a mandatory sentence, but the housekeeper wouldn't. The issue with the sign, AM1704, again, the example Senator Lathrop gave was of someone being wheeled in on a gurney being disruptive, striking the people, that's not a person that's going to see that sign and be governed accordingly. So there's no question that protection needs to be provided and our existing assault laws on first-degree assault provides for a maximum sentence of 50 years. For a second-degree assault, a maximum sentence of 20 years. And in situations like those that have been outlined, you certainly...our judges have the discretion and exercise the discretion we accord them, and we defer to their judgment on all other issues to impose the appropriate sentence for this kind of behavior. I'm really concerned about carving out classes of more vulnerable or less vulnerable. We've already heard that there's another bill pending about another class of workers who are deemed more vulnerable. There are certainly others out there who will submit that they are more vulnerable. I think the better public policy approach to dealing with this is to deal with workplace violence and assaults in the workplace. And if we're going to extend this kind of protection of mandatory sentencing to someone who is injured while performing the duties of their job, then it should be anyone who is performing the duties of their job. And I appreciate and understand that hospital workers are coming to someone's aid. But others do the same thing. [LB677]

SENATOR LANGEMEIER: One minute. [LB677]

SENATOR COUNCIL: Even within the hospital itself, others do the same thing. Yet if

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they don't happen to have a credential, the person who assaults them won't face a mandatory sentence. So for those reasons I don't believe that we should be advancing LB677 until we as a body develop a policy that...a broad policy on how we're going to deal with violence in the workplace. Because otherwise, we're going to be asked to judge who is more vulnerable and whose services are being rendered are more valuable because I can assure you, the person that doesn't have a certification that is wheeling somebody to their room, bringing them water, or doing those types of things is just as vulnerable as the person who are doing those things and have a certificate. And I'm troubled by the fact that... [LB677]

SENATOR LANGEMEIER: Time. [LB677]

SENATOR COUNCIL: ...within this bill we make those kind of distinctions. Thank you. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Council. (Visitors introduced.) Returning to the discussion on the committee amendments to LB677, those wishing to speak we have Senators Gloor, Campbell, Harms, Pahls, Carlson, and others. Senator Gloor, you're recognized. [LB677]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I'd like to address a couple of comments that have been made this morning and then go back and review some of what I tried to bring before the body yesterday. First of all, as it relates to the conversation between Senator Wightman and Senator Lathrop about facilities covered under this, under the definition that's built in, we're not talking about assisted-living facilities, nor are we talking about nursing homes, long-term care facilities. I appreciate Senator Council's questions, issues. I know Senator Council is no less concerned about assaults on healthcare workers than any of us. And, in fact, her comment about workplace violence and legislation, perhaps in that arena, is an example of that. But I also think that she is not casting the net broadly enough when she looks at what may be the responsibility of this institution when it comes to providing protection for certain classes of individuals. It is highly unlikely that the person pushing a gurney in a hospital in this day and age will not have some degree of training, a CRNA is a nurse anesthetist, but CNA, a certified nurse assistant, are almost always the people who are employed at a hospital and require training and require an education and certification. But the people who push gurneys in this day and age are very likely, because of the illness associated with so many people in our hospitals, to be nurses and CRNAs and perhaps even a doctor occasionally. The bigger question here is, and always has been to me, the vulnerability of these healthcare workers. As Senator Dubas and Lathrop talked about, there's a great deal of vulnerability because people in healthcare run to assist, are not in a position to refuse to assist people in need, including people who are violent either by their nature or because they're under the influence of some medication. I don't think any of you have ever walked into a hospital

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where you had to go through a screen, where you had to walk through metal detectors. You have to do that at courthouses and a number of other places in this country. But rarely, at least not in this state, are you expected to go through some sort of screening and the opportunity for a healthcare facility to weed out somebody who comes in the door who may be there because they're angry with a spouse who is hospitalized. It just doesn't exist. The vast, vast majority of our hospitals in this state don't even have security guards and have special codes that they call that require staff to be summoned to a specific place to assist in trying to subdue somebody or protect a fellow coworker. Talking about a vulnerable population by the nature of what they do. There has been this issue of many of these individuals are out of control because they're clouded as a result of substance abuse problems. Since when is that an excuse for people to be let off the hook when it comes to penalties? Just because somebody is driving under the influence of alcohol, we don't say, well, of course, they weren't in control of their faculties, that's the reason they crashed into a school bus. To me having strong penalties against people whether they're under the influence of something, or whether they're in their right minds, if I can even use that term in this instance, makes sense as consistent the way we currently look at enforcing our laws. Finally, I want to go back to a comment I made yesterday of a bill that I brought forward last year which is assault with bodily fluids. Some healthy debate about that law. It went into effect. The question that many in this body had is will it make a difference? Will people really pay attention? Will they see the signs? Will there be any impact this has? And what I'm being told by law enforcement is, as a result of enactment of that legislation... [LB677]

SENATOR LANGEMEIER: One minute. [LB677]

SENATOR GLOOR: Thank you, Mr. President. As the result of enactment of that legislation, the word got around. And the incidents of assault with body fluid against our public safety officers has, in fact, dropped since it went into effect. The word will get around. It will get around. And even the people under the influence of something will know. It may not be instantaneous, but it will take effect and it will make a difference. I urge the body to accept the amendment and the underlying legislation, LB677. Thank you. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Gloor. Senator Campbell, you're recognized. [LB677]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. I rise in support of the amendment as well as the underlying bill. And some of you may know that I serve on a hospital board. And so I bring to you today some observations that I have seen serving on that board and that this is an increasing problem for hospitals, violence in hospitals, and particularly for our hospitals that run trauma units and for all the people that come with them to those trauma units. This past summer the Health and Human Services Committee had an excellent eye-opening interim study on the looming

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nursing shortage. And on the hospital board we have spent time talking about that shortage which is to come. And in some cases nurses have indicated that they are leaving hospital care work due to the injuries that they may have sustained, and particularly because of the injuries and the trauma that comes from watching their fellow employees experience those injuries. That to me is part of the reason why this makes the bill before us so important because it is an increasing, looming problem. And we have to count on our medical facilities to be there, to be safe places for all of us to go. I'd also like to add a personal observation from a different perspective and that is, this past November, and a number of you have heard this story, it all ends well so don't worry, but my husband experienced some health problems and on three separate occasions we were in the ER. And one of those occasions was a Friday night. And as I sat and waited with Dick to finish all the tests and to know what was going to happen to us, it was quite an experience to be there on a Friday night and watch the intensity of the activity and the intensity of people who come into that ward with friends or perhaps enemies and watch our hospital staff perform exceptionally with calm and professionalism. But there were times in which you heard a lot of raised voices, a lot of activity, and I can understand, if I worked in that atmosphere that I, too, would be concerned about a violence that is increasing in our hospitals. And so I urge you to give careful consideration to the bill that's before us and its amendment. Thank you, Mr. President. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Harms, you're recognized. [LB677]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM1704, as well as the underlying bill, LB677. You know colleagues, we have a violent population and it's simply getting worse. What happens in rural Nebraska is that many times the law enforcement will bring someone in who has been in a fight or whatever has taken place, they go into the emergency area. And then what happens is, once they deliver them to the hospital, they leave. They have other responsibilities. And most hospitals are really not prepared to take care of what might happen in the hospital. So whatever we can do to start to prevent that; anything we can do to strengthen laws and to let people understand that if you're going to be violent in this workplace, then the penalty is going to be difficult and it's going to be severe. And I think we need to continue to do that because, quite honestly, where I live we are at risk and that medical professional group of people are at risk. So I hope that you will give that serious consideration and support AM1704, as well as LB677. I'd like to yield the rest of my time to Senator Lautenbaugh, if he would like it. Thank you, Mr. President. [LB677]

SENATOR LANGEMEIER: Thank you. Senator Lautenbaugh, 3 minutes 50 seconds. [LB677]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Harms. I

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do rise in support of this bill. And I won't belabor some of the same points that others have made, but I do think that the people we're trying to protect here are in a different circumstance because of the requirements of their profession, the things we're asking them to do, and the fact that they are required to be exposed to a certain level of violence, unfortunately. I think we need to do what we can to protect them. And I think this bill is a rationale, measured approach to that, that hopefully will provide some measure of comfort and some measure of additional protection. I have...this is a conversion for me. I did not support this coming out of committee, but I do understand what we're trying to do here. And I do think this is of value. So I would ask you to support both the committee amendment and the underlying bill. I think it is an important thing that we, hopefully, can get done. Thank you very much, Mr. President. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Pahls, you're recognized. [LB677]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I also echo what Senator Lautenbaugh said because I do have a number of friends who, of course, work in this particular area. Senator Lathrop, I really don't have a lot of meat to add to your bill. I support it, but I do have a life episode that I would like to bring forth; reminds me something that Senator Campbell said. I had been in a hospital twice in my life and both of those times dealt with this body. The first time I was just elected and I...I needed to go to the emergency room so I'm in the emergency room, I'm laying on the gurney and they're starting to do their things to me. And there's a curtain between myself and the individual on the other side. And I never really thought about this because I've heard some of my friends who are nurses or doctors talk about some of the things that happened in their life. I really thought, oh, you know, they're adding something to it. I'm laying, basically about ready to go to sleep. On the other side of this curtain is a young man yelling out, whose got my gun? Where is my gun? And I'm telling you, that brought that home to me, because I'm telling you, I'm laying there. And whatever happened, I don't know, because at that time they had put me to sleep. But I do know that something was going on as they rolled me away. So this is...I mean, I'm just telling you, that's a life episode that I can identify with what this bill is trying to accomplish. Thank you. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Carlson, you're recognized. [LB677]

SENATOR CARLSON: Mr. President and members of the Legislature, I support the intent of LB677 and I support stiff penalties for infractions that are included in the bill. But I do have a couple of concerns. First of all, I don't really think that a posted notice is a deterrent, but I certainly accept that when you put something into effect that has a stiff mandatory penalty that word would get around and hopefully in that way it would act as a deterrent. I do have a question I would like to direct to Senator Lathrop if he would yield. [LB677]

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SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB677]

SENATOR LATHROP: I'd be happy to. [LB677]

SENATOR CARLSON: Senator Lathrop, I think in our prison system we have too many people behind bars for nonviolent offenses. And we know that there's a good cost to the state, there's a big cost to the state when we incarcerate somebody. And I think...would you agree with me that it is in excess of \$30,000 a year. [LB677]

SENATOR LATHROP: I think that's the...we usually use about \$33,000 a year when we talk about the Nebraska Penitentiary. [LB677]

SENATOR CARLSON: And for mandatory sentencing for what we are talking about here, I don't have a big argument with, but somehow it appears to me we could add to our population and at the same time we're not letting somebody out that's in there for a nonviolent reason, so we're increasing our costs. Why can't we have some kind of a mandatory stiff fine that might also be a deterrent but would bring money into the state instead of taking money out? [LB677]

SENATOR LATHROP: I'd be happy to answer that. The population of people that are engaged in assaults don't pay fines. Most of them are folks that just don't have the means to pay a fine. That would be fine. We could charge them \$5,000 as a mandatory penalty, and then they come before the court and say I can't pay it. So we accomplish nothing. We can't throw them in jail because they can't pay their fines. And so in the end we're not deterring anybody because many of the people that engage in this sort of activity are not deterred by the prospect of a fine. [LB677]

SENATOR CARLSON: And I believe what you said. I agree that that's the case. So then when we have mandatory incarceration we're adding not one cost, but two. Now some of these people maybe don't have jobs and they're not even earning money, but some of them are. So during the incarceration they have no earnings and so we're losing the tax benefit of those earnings and their spending ability for sales tax. So do you agree that mandatory sentencing probably involves two forms of additional cost to the state? [LB677]

SENATOR LATHROP: I think that that's very possible. But when somebody does jail time, they're away from their job, yes. I can't argue with that, assuming they have a job in the first place. [LB677]

SENATOR CARLSON: Okay, and I...and so that's my struggle with this. Now this is tongue in cheek, but we can't go...unfortunately maybe, we can't go back to the days where we could have a mandatory public caning and 20 lashes and the number

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determined by the severity of the incident, but we can't do that. That would have a deterring effect. So this is good debate. It can be a struggle as to what we should do. I understand the intent and believe that it needs to be dealt with. Thank you, Senator Lathrop, and thank you, Mr. President. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Coash, you're recognized. [LB677]

SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. I want to rise just once more and explain my position on this as one of the members who voted against this coming out of the committee. And it certainly, again, it's not against the intent behind LB677. We do ask our healthcare workers to put themselves in harm's way. But we ask a lot of other folks to put themselves in harm's way and we don't carve out special pieces of legislation for them. And I just made the decision to draw that line. Since I spoke the first time yesterday, and then I was listening carefully to the reasons for voting for this bill and I was especially listening carefully to Senator Lathrop. And Senator Lathrop was doing a really good job of explaining how this might work. And the example that I continued...that I heard him say at least once was this would be a person who was maybe being wheeled in, or at the very least that the healthcare provider is leaning over them in an attempt to provide care. And no doubt that is probably what they would do. And so my question, that made me think, well, if the healthcare worker is leaning over them that would indicate they are probably laying down. What's the likelihood that they're going to see the sign that tells them that if they hit the healthcare worker that they're going to spend some time in jail. I'm concerned about that and to that end I would like to ask Senator Lathrop a question if I might. Can I ask Senator Lathrop a question? [LB677]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB677]

SENATOR LATHROP: Yes. I will. [LB677]

SENATOR COASH: Thank you, Senator Lathrop. Senator Lathrop, you gave those examples...or gave that example at least once yesterday and my question to you is how do you think this would play out if it could be proven that the person who hit the healthcare worker was never in a position to see the sign? Maybe they were wheeled in on a gurney because they were injured or maybe they were so far under the influence, which is probably the case sometimes, that they were unable to see, or maybe...and the reason that they were brought there, it was a fight and they lost their glasses. But in court it would come out that the person being charged with this crime, facing mandatory jail time, could prove that he or she never actually saw that sign. How would that play out in court? [LB677]

SENATOR LATHROP: I...it would...you do not have to see the sign in order for this to

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be imposed. My answer to that is, these are people who assault another. And your argument, Senator Coash, I believe go to whether or not they have the requisite intent to commit the underlying assault. And again, that goes back to whether they're guilty of an assault or not. This is about the punishment for somebody who has all the elements. They intend to hurt a healthcare worker, right? So we're not talking about the elements...when you talk about somebody who is under the influence, we're going off into whether they have the requisite intent to commit the assault in the first place. And that's a whole different matter from what their punishment should be. I will tell you interestingly enough, we have a limit, a cap on damages so if you go into a hospital and...it's the Hospital Medical Liability Act. Under the Hospital Medical Liability Act, doctors that want to participate in this, hospitals have to post a sign. You've probably never even read it, but it's in your doctor's office. And it advises people that that doctor comes under the act. And so if that doctor commits some terrible act of negligence and you are blind or you're paralyzed, you're still capped on your damages whether you saw the sign or not. And so I think the sign is just a warning to tell people... [LB677]

SENATOR LANGEMEIER: One minute. [LB677]

SENATOR LATHROP: ...that we are taking this very, very seriously; these people are particularly vulnerable; this is not the place to be assaulting someone. [LB677]

SENATOR COASH: Thank you, Senator Lathrop. In my remaining minute, colleagues, I would just ask you to consider...do you believe that this will have the deterrent effect that we hope it will have? Do you think the assailants who would assault a healthcare worker will change their behavior because of LB677? Thank you, Mr. President. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Coash. Senator Lathrop, you're recognized. [LB677]

SENATOR LATHROP: Thank you, Mr. President. And thank you for the questions because I really would invite your participation in this if you have concerns. I want to offer something and that is, when we sit in Judiciary Committee and we hear about different folks that come in and say, I'd like some particular protection for this class of worker, or protections from this class of offender, we necessarily have to draw imperfect lines when we respond to that. The lines in LB677 may be imperfect. Certainly Senator Council isn't satisfied with the distinctions this bill makes. It's not perfect. And you might have a concern about where we draw the line or what the mandatory sentence is. Those are all fair subjects for today and I'm happy to talk to you about them and happy to listen to you if you think our lines and the distinctions we've made in LB677 are imperfect, right? Because that's what we're hearing. I need 48 people to tell me what their best idea is of where the line should be and what the punishment should be and I'm open to that. Certainly, I'll sit down and talk to anybody between General and Select or today if you like. So my offer to you is, if you think the lines are imperfect, if someone

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else should be included, if the penalty is too high, let's talk about it. I think when we talk about why are we carving out healthcare providers, I want to give you some statistics from the Bureau of Labor Statistics. From 2003 to 2009, eight registered nurses were fatally injured at work. Four of them received gun shot wounds that led to their death. Four others died from other fatal injuries. And of the eight RNs that were working in private healthcare facilities, pardon me, eight of them were in private healthcare facilities and eight of them were...all eight of them were from age 35 to 54. In 2009, there were 2,050 assaults and violent acts reported by RNs requiring an average of four days away from work. So in some respects, that illustrates the unique problem that nurses and healthcare providers have in the workplace. It also takes us to a work comp issue. These people when they are injured, many of them leave the profession, right? They don't want to deal with it any longer and they leave the profession. Many of them make work comp claims. What we can do to help protect them, I think, is the right thing to do, but there is a business reason to do it too. The hospitals and the clinics are paying for these people after they're injured in work comp claims. And many of them leave the profession. And I think Senator Campbell talked about that. Senator Pahls made a good point. If you go to a trauma center across the state, even a hospital, but a trauma center on a weekend night, you might have two gun shot victims in there that they're trying to care for and in comes somebody from a car accident. And now they're getting...now the family is getting angry, they're getting angry because their loved one isn't cared for while the doctors are trying to perform or use their best judgment to decide who is going to be treated first. And those are the kinds of things, and some even more involving folks that show up that want to...that come with the person that's injured or they come to see the people that follow the injured person. The hospital, the hospital...these trauma centers are no place to play out the balance of the violent activities that are going on. And this bill is intended to address that. [LB677]

SENATOR LANGEMEIER: One minute. [LB677]

SENATOR LATHROP: Senator Carlson expressed some concern about mandatory sentences. I would agree with that, but we're not talking about somebody engaged in a nonviolent crime, right? This isn't somebody where we're going to make them go mandatory jail time for possession of less than an ounce of marijuana, anybody's definition of a nonviolent crime. These are people that assault someone who can't turn them away at the emergency room door. That's who we're trying to protect today. And I think they're deserving of the protections afforded under LB677 and if you have concerns that the lines and the distinctions that we're making are imperfect, I'm happy to talk to you about those. So once again I urge your support of the amendment and the underlying bill. Thank you. [LB677]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Schumacher, you're recognized. [LB677]

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SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This is a good discussion that I think we're having today. I kind of back off and look at what our criminal justice system is supposed to do. We have the officers, the peace officers who arrest and detain the individual who has supposedly committed a crime. In the first stage they conduct an investigation. They take it to a prosecutor, county attorney in this state, who applies the law to the situation and whose primary obligation is the doing of justice. Then we have a trier of fact, a jury to make sure that the charges are true beyond a reasonable doubt. And then we have a judge who oversees the proceeding and in the end his final job is to administer justice and penalties. Mandatory sentences are believed by some to create an aberration in that process. What I am not hearing today is that eight nurses got shot and they got off with less...the perpetrator got off with less than two years. I'm not hearing that Nebraska's judges are cream puffs and that they will just give these people a pat on the head and a little probation and they're out the door. Our judges are very firm when it comes to violence and I would suppose it is in their realm to say, you get a little extra if this is violence against a healthcare professional. What I see is happening here when you put these mandatory provisions into effect is that all of a sudden the injustice that they might create in those circumstances where a good judge would say, the mandatory is too much. That injustice gets shifted to the prosecutor. And the prosecutor is then faced with creating a situation where the minimum mandatory applies or charging attempted assault instead in which the minimum mandatory does not apply. And that is not the prosecutor's role, but his primary role is the doing of justice and if a minimum mandatory doesn't fit the situation, that's going to be the outcome. If a sign is going to make a difference, under our assaults statute, if you seriously hurt someone, you can get 50 years, let's put a sign up. Assaulting a healthcare professional can get you 50 years. Certainly the reputation is out there now because our judges are not cream puffs, that if you assault somebody you're going to get a stiff penalty. But the reality is, these people are in moods that they don't care about such things. They may have a child who has just been killed in an automobile accident laying in the emergency room and want to get in there. They may be somebody in the second stage of Alzheimer's which lasts for two to ten years where you get violent. They may be out of it because of drugs, but they're not thinking rationally in a lot of these particular cases. These, in our system of justice, are a place for the application of what we pay judges to do. And I am not hearing, and I certainly will listen very carefully to hear situations where this heinous type of behavior has occurred... [LB677]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: One minute. [LB677]

SENATOR SCHUMACHER: ...and our judges have just tapped people on the head and given them a little probation. These people are getting punished now. They deserve to get punished for assaulting a healthcare official. We should be cautious on carving out

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special things whether it is in exemptions for property tax or special enhanced punishments. One could argue that a lawyer who has to go into a room with a murderer is entitled to special situations. I think this is a very, very...the instance where policy should overcome the specifics of a particular situation. Thank you, Madam President. [LB677]

SENATOR SULLIVAN: Thank you, Senator Schumacher. The Chair now recognizes Senator Council. [LB677]

SENATOR COUNCIL: Yes, thank you, Madam President. You know, again, I guess I need to put some things in perspective. I certainly appreciated Senator Campbell's comments and Senator Campbell and I share an experience. I, too, served on a hospital board. I served on the hospital board of one of the two trauma centers in Omaha. I know what goes on in emergency rooms. I know the risk that all of the employees in an emergency room face. As Senator Ashford said yesterday, I'm aware of the need to provide intervention. I'm a part of a group that provides funding for intervention at emergency rooms because I know that there are people who come in who are stressed, they're experiencing very traumatic events in their lives and they don't act appropriately. But again my concern is, not only are we carving out a group of healthcare providers, a group of people, but we're carving out a group within a group. Senator Gloor, I don't disagree with what he said, but in response to the question by Senator Wightman, AM1704 expressly excludes from this special protection a CNA, an LPN, a RN, or a MD who works at an assisted-living facility or a nursing home and if you don't think that those folks are subject to assault, visit an Alzheimer's wing in one of those institutions. AM1704 carves them all. And I understand, because when you drill down on this bill, this is an emergency hospital room bill, period. Because if we were concerned about all healthcare providers in their residential situations, and that's what we're talking about, or a clinic, then it would cover everyone. Senator Pahls related his experience. Well, I was in the emergency room at the trauma center on whose board I served. The police rolled in a guy into the examination room next to me who was out of his mind on meth. And he was flailing and swinging and swinging his arms and flailing around. Everybody in that emergency room came to the aid of the individual healthcare professionals. And the only person that this guy struck was the little guy from housekeeping who was in there trying to assist his coworkers restrain this guy. Under this bill he's not valuable enough for the person who assaulted him to get a mandatory sentence. That's the problem I have with this bill. If we want to protect the situation, and it's really emergency rooms when you drill right down to it, then let's try to come up with a way to protect employees in emergency rooms. But I have a problem with carving out certain people in these emergency rooms for this additional protection. I also agree that a sign can serve as a deterrent. But I also agree with Senator Schumacher a sign that says I could be subject to up to 50 years in prison should have just as much a deterrent effect as I could be imprisoned mandatorily. [LB677]

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SENATOR SULLIVAN: One minute. [LB677]

SENATOR COUNCIL: I don't know which would be the greater. For me it would be...I could be subject to 50 years in prison. But in any event, I just urge this body to be careful about carving out particular groups of individuals as being worthy of more protection than others when both of them...when all of them could be subject to the same risk and that we need to be looking at some kind of workplace violence policy because, rest assured, I mean, we already have evidence of it. We're going to be getting bill after bill after bill and we can all make cases for why the next group of workers is at risk and vulnerable and needs the additional protection. So I would urge the body, rather than rushing... [LB677]

SENATOR SULLIVAN: Time, Senator. [LB677]

SENATOR COUNCIL: ...thank you. [LB677]

SENATOR SULLIVAN: Thank you, Senator Council. The Chair now recognizes Senator Nelson. [LB677]

SENATOR NELSON: Thank you, Madam President, members of the body. Colleagues, most of what I was going to say has already been said by Senator Schumacher and Senator Council. This is a difficult question for me and I have to say I think I'm coming down on the side of the opposition here. May I ask a question of Senator Lathrop? [LB677]

SENATOR SULLIVAN: Senator Lathrop, would you yield? [LB677]

SENATOR LATHROP: Yes, I would. [LB677]

SENATOR NELSON: Thank you, Senator Lathrop. Senator Council said most of our discussion here has been about emergency rooms. And I haven't...I'm from Omaha, and so are you, and I haven't been in all the emergency rooms in Omaha, but there are major ones that are the Med Center and there's Creighton and then there is an emergency room out at Methodist. My impression is that in all of those places they have a police presence at the emergency room. Am I wrong in that? [LB677]

SENATOR LATHROP: Yes. [LB677]

SENATOR NELSON: I am wrong. [LB677]

SENATOR LATHROP: Yes. [LB677]

SENATOR NELSON: No security... [LB677]

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SENATOR LATHROP: No, I just got done with a...interestingly, I just got done with a case that involved an assault on a nurse and it was at Midlands, and the nurse...the police are there, they...the guy came in with police, and they leave, they leave. And there's nothing but maybe two security guards and they're not trained police officers. And so, interestingly, in this particular case, I talked to them, they said the security guards are trained just to stand out of the way. They're not police officers. It's not the same as having a police presence in the emergency room. I can't talk to you or I can't say that they don't at the Med Center or at Creighton. They might just by chance, but I don't think it's like when you go into the grocery store and you see an Omaha police officer there. I don't think that's the case. [LB677]

SENATOR NELSON: Frankly I'm astounded. We see security officers in grocery stores, and you're telling me the security officers at the hospitals have to stand aside and can't protect people from violence? [LB677]

SENATOR LATHROP: I know in the particular case that I was involved in, which was a beating of a nurse, that when I took some depositions they said these guys just...will they intervene? They don't have anything to intervene with. They don't even have mace, a night stick. All they do is they're trained to try to talk people down. So if somebody is very agitated, they're trained to try to de-escalate the situation. If that doesn't work, they have no more to offer than you and I do, except maybe youth. (Laugh) [LB677]

SENATOR NELSON: All right. Well, okay, I guess I have to accept what you say, but I wonder why a hospital would put out the money for security guard if we don't have protection there. I've been in twice now in emergency room at Methodist and I always assumed if anybody was going to assault me there that that security guard would be there to come to my assistance. Thank you, Senator Lathrop. The second thing is that this may be a deterrent, but I share Senator Council's concern about carving out, because I think if we begin with this then pretty soon we're going to go to other locations where we have healthcare workers, nursing homes, assisted living, and that sort of thing, and I don't know where it will end. I'd just like to point out that if we're going to take discretion away from judges, and regardless of the circumstances, the judge has no discretion but to impose either a two-year penalty or a first one-year penalty in jail or in imprisonment and six months in jail, I just think the body should be aware that the first two of those are Class II and Class III felonies. And a sentence of one year or more shall be served in institutions under the jurisdiction of the Department of Correctional Services. This is not the county jail, this is the Department of Correctional Services, whatever facilities they have. That means that people... [LB677]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB677]

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SENATOR NELSON: ...come into emergency room and in the heat of the moment make a mistake and do assault somebody to the first or the second degree are going to wind up in our correctional facility for at least a year. And I'm not sure that we want to...in every situation send people away for one year when there might be cause on the part of the judge to sentence them something less than that in the way of a fine rather and a smaller sentence of a matter of months just as a penalty for what has occurred. So because of this, I think I have to stand in opposition of AM1704 and LB677. Thank you, Mr. President. [LB677]

SPEAKER FLOOD: Thank you, Senator Nelson. There are no other lights on. Senator Ashford, you're recognized to close on AM1704. [LB677]

SENATOR ASHFORD: Thank you, Mr. Speaker. Very briefly, I outlined the amendments, they're technical in nature for the most part, but it does provide for the notice provision in the...that would go into the bill. Again, the Judiciary Committee, or the majority of the members felt, as do I, that there is a special circumstance here that...which is, that if we, in effect, the interference with the healthcare professional in attempting to, in some cases, save the life of a third party is such an overriding concern and as a matter of public policy and state interest is, in my view, compelling. And if we give those in the healthcare facility appropriate notice, as this notice does do, and we are sending the message, and I think appropriately so, that if you interfere with the practice of these healthcare professionals in triage, in many cases, as we all know what an emergency room can be like, and for those reasons I would urge the adoption of AM1704 and the advancement of LB677. Thank you. [LB677]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the closing to AM1704. The question for the body is, shall AM1704 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Madam Clerk, please record. [LB677]

ASSISTANT CLERK: 32 ayes, 3 nays on adoption of the committee amendments, Mr. President. [LB677]

SPEAKER FLOOD: AM1704 is adopted. We now turn to discussion on LB677. Seeing no lights, Senator Lathrop, you're recognized to close on LB677. [LB677]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate your vote on that last amendment. The amendment is essentially the bill. I would appreciate your support of LB677 now. And I'll use this as an opportunity just to suggest that we not lose sight of the fact that we're not changing the elements. Those people that wouldn't be charged with an assault currently, the Alzheimer's patient, the person who is on drugs and nobody has a charge filed against them, those people aren't going to be charged

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now. It's just about the people who are currently...fit the definition of an assault, but they perform that assault on a healthcare provider as indicated in the bill, will come within the purview of this. And if you'd like to talk about this any further with me between General and Select, I'd be happy to talk to you. Thank you. [LB677]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the closing to LB677. The question is, shall LB677 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB677]

CLERK: 34 ayes, 4 nays, Mr. President, on the advancement of LB677. [LB677]

SPEAKER FLOOD: LB677 advances. We will momentarily stand at ease. Would the following senators please approach the Chair. Again, would the following senators please approach the Chair: Senator Ashford, Senator Campbell, Senator Avery, Senator Cornett, Senator Heidemann, and Senator Langemeier. Again, would the following senators please approach the Chair: Senators Ashford, Campbell, Avery, Cornett, Heidemann, and Langemeier. I want to make the following announcement as it relates to the weather across the state of Nebraska. Numerous blizzard warnings have been issued for portions of Nebraska. Here in southeast Nebraska, obviously, there's concerns about blowing snow and excessive amounts of snow in parts of central Nebraska, anywhere from 10 to 16 inches of snow. Given the situation with the weather, the following procedures are suggested for your approval today. It is my opinion that we should cancel the hearings for all committees tomorrow at 1:30. Again, cancel all the hearings set for tomorrow, on Friday at 1:30 and reschedule those hearings for Monday morning, February 13, at 9:30 in the morning. So we will cancel the hearings tomorrow at 1:30. And, Sergeant at Arms, if you could secure the rear of the Chamber, it's getting excessively loud back there. We'll go ahead and cancel the hearings tomorrow. We will place tomorrow's hearings set for 1:30 on Monday morning, February 13, at 9:30. On that day, on February 13, we will check in at 9:00 and we will adjourn prior to 9:30 to allow those hearings to begin. We will be in session tomorrow. Instead of starting at 10:00, we will start at 9:00 a.m. and we will envision an 11:00 adjournment to allow members to begin getting home. I know that some of you need to get home a little earlier, we understand that, given the situation with the weather. There will be a motion up today to consider whether or not the Legislature is comfortable cancelling those hearings, but I do believe it's in the best interest of the citizens of this state, the members and the staff that we not hold hearings tomorrow at 1:30. I'm going to repeat it all one more time for the benefit of the Legislature and there will be a motion later. There will be no hearings tomorrow in the afternoon. Those hearings will be held on February 13 at 9:30 a.m., with your permission. We will start tomorrow at 9:00 a.m., envision an 11:00 adjournment understanding that some members will already be headed west by then. Thank you very much for your cooperation and your patience and your attention. We'll continue with our agenda. Mr. Clerk, items. [LB677]

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CLERK: Thank you, Mr. President. Items before we proceed, Enrollment and Review reports LB427, LB344, LB576, LB498, LB836, LB714, LB852, and LB853 all to Select File, some having Enrollment and Review amendments. New resolution, LR388, offered by Senator Dubas, that will be laid over. I have a hearing notice from the Health and Human Services Committee signed by Senator Campbell. Health and Human Services, chaired by Senator Campbell, reports LB904 to General File. Judiciary, chaired by Senator Ashford, reports LB721, LB814 to General File. And Senator Krist has an amendment to be printed to LB60. That's all that I have, Mr. President. (Legislative Journal pages 417-420.) [LB427 LB344 LB576 LB498 LB836 LB714 LB852 LB853 LR388 LB904 LB721 LB814 LB60]

SPEAKER FLOOD: Thank you, Mr. Clerk. Mr. Clerk, we'll proceed to the next item on the agenda, LB873. [LB873]

CLERK: Mr. President, LB873 is a bill by Senator Schilz. (Read title.) Bill was introduced on January 6 of this year, referred to Natural Resources, advanced to General File. I have no amendments to the bill, Mr. President. [LB873]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Schilz, you're recognized to open on LB873. [LB873]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Good morning. I introduced LB873 to extend the sunset for eligible claims under the Petroleum Release Remedial Action Act by four years to June 30, 2016. The Leaking Underground Storage Tank Program began its implementation back in 1986 with a deadline, the first sunset, of December 22, 1998, for underground tank upgrades including spill/overflow prevention, leak detection, and corrosion protection to be completed. The goal of the Underground Storage Tank Program is to investigate and clean up petroleum storage tanks that have leaked into the environment. This includes mostly underground storage tanks, but also aboveground tanks that have contained petroleum as well. Many of the tanks that have leaked were found at service stations across Nebraska, but other tanks with leaks, including heating oil tanks and farm tanks, are also included within this. The procedure at these sites usually involves a preliminary assessment to determine the need for further work. If significant contamination is present, an investigation is required to determine the impacts on the environment. This usually involves drilling monitoring wells to examine the extent of the groundwater contamination and, if necessary, cleanup is then required. In addition to the mechanical requirements to prevent releases, on October 26, 1988, the EPA established financial responsibility regulations which require underground storage tank owners and operators to demonstrate financial responsibility up to \$1 million. This provides the ability to pay for cleanup, or third-party liability compensation that results from a release from an underground storage tank. Financial responsibility ensures the timely completion of corrective action and third-party compensation and thus reduces the risk to human health and the environment posed by

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these leaks. Insurance carriers were unwilling to provide this coverage due to the fact that they would not insure property they knew was contaminated, or the so-called "insure the burning building." Therefore, states created Leaking Underground Storage Tank Funds, commonly known as the LUST Funds, to provide coverage to underground tank owners. We fund our LUST Program through a underground storage tank fee of nine-tenths of a cent on gasoline, and three-tenths of a cent on diesel. All retailers of motor fuel pay the same fee based on each gallon they sell. Marketers who sell lower volumes of fuels would have a tremendous financial disadvantage if they were required to obtain private insurance. Underground storage tank owners/operators look at the Nebraska LUST Program as a self-funded insurance plan funded by the fee on gasoline and diesel. The state of Nebraska acts as a third-party administrator deciding which claims are covered. At the onset of the program, all sites were assessed and prioritized for cleanup based on their level of contamination and threat to the surrounding environment and groundwater. The fund and the eligibility date to which submit a claim to the fund needs to remain in place until the current backlog of sites are remediated and that is why the date in which to turn a claim in would be extended with this bill to June 30, 2016. And with that I would hope that I can get your support and a yes vote on LB873. Thank you, Mr. President. [LB873]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Schilz. You've heard the opening to LB873. Are there members wishing to speak? Senator Pahls, you are recognized. [LB873]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Could I entertain a question for Senator Schilz? [LB873]

SENATOR COASH: Senator Schilz, will you yield to a question from Senator Pahls? [LB873]

SENATOR SCHILZ: Yes. [LB873]

SENATOR PAHLS: I am just curious. How many times has this bill been sunsetted and moved on? [LB873]

SENATOR SCHILZ: You know, I don't know for sure. But obviously if it started back in '86 or whenever it was, obviously we've done it a number of times. I know this, that during the testimony on the...in the hearing, the petroleum folks are in favor of this. They don't mind paying this. And they have cleaned up many sites. So it's been a pretty positive program. And I think that that's why we want to extend it. [LB873]

SENATOR PAHLS: Okay. So apparently, it is my understanding, about every four years you need to come back to the body and say, let's continue with this program. [LB873]

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SENATOR SCHILZ: Absolutely. [LB873]

SENATOR PAHLS: Okay. And what I find quite interesting, because I'm going to talk about sunsets now, not necessarily directed toward your bill, which I do support. But what I think is very interesting, the sunset is okay in a bill such as this. But again many years ago, when I said let's take a sunset at the tax exemptions, that raised all kinds of Cain with the lobbyists. And what I find ironic, they said, we don't want a sunset, we don't want to review those exemptions. And I said, I wasn't trying to stop exemptions. I was saying let's review them on a regular basis. No, we can't do that. What I find is quite ironic, when I look at the proponents of this particular bill, it fits them this time. One of them on there was one of those against it, in the other direction. That is one reason why I do think we need sunsets because we do review this. And if it's a good idea, as this is, what do we do? We extend it again. And that's the only reason I'm speaking on this bill right now. It's nothing against the bill, to be honest with you, Senator Schilz. But I just...I'm hearing the word "sunset" more frequently as I leave this institution, which I think is good because we will always have another group of senators coming in, taking a look at that. That was my primary reason many years ago, it appears or it seems, to talk about sunsets even with exemptions, not to say we need to do away with them, but let's review those, especially some of those who started in the sixties. Again, I do support the bill and thank you, Senator. [LB873]

SENATOR COASH: Thank you, Senator Pahls. Senator Carlson, you're recognized. [LB873]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm simply responding to what Senator Pahls has said. Several of my bills have had sunset provisions on them. And I think they serve a purpose. I think it does cause us to go back and review why it was there in the first place. And if there is a request to remove one even before the date, this is the right way to do it. And so I wouldn't be opposed to having more sunset provisions on more bills that we put into effect. Thank you. [LB873]

SENATOR COASH: Thank you, Senator Carlson. Seeing no other members to speak, Senator Schilz, you're recognized to close on LB873. Senator Schilz waives closing. The question before the body is, shall LB873 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB873]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB873. [LB873]

SENATOR COASH: The bill is advanced. Senator Larson for a motion. Mr. Clerk for a motion. [LB873]

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CLERK: Mr. President, I have a motion with respect to the Speaker's announcement earlier. Would you like me to read the motion, Mr. Speaker?

SPEAKER FLOOD: Yes.

CLERK: Mr. President, the Speaker would move to suspend Rule 3, Section 14, to permit cancellation of the hearings by the following committees: the Government, Military and Veterans Affairs Committee; the Health and Human Services Committee; the Judiciary Committee; the Natural Resources Committee; and the Revenue Committee cancel hearings scheduled for Friday afternoon, February 3 of 2012.

SENATOR COASH: Speaker Flood, you are recognized to open on your motion.

SPEAKER FLOOD: Thank you, Mr. President and members. This is what I talked about. It does require a rules suspension, pursuant to Rule 3, Section 14, to go ahead and cancel those meetings before tomorrow. And I would ask for your adoption. I think this allows us to make sure we have the hearings, that every citizen in the state that wants to drive here, hopefully, will be able to make it on the subsequent date. But it certainly doesn't put anybody on the road in bad weather. And it allows us to get our membership back to their homes safe and sound for what looks like a pretty tough weekend of winter weather. Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Flood. Members, you've heard the motion to suspend the rules to allow for the cancellation of the hearings. It's now open for discussion. Seeing no members wishing to speak, Senator Flood. Senator Flood waives his opportunity to close on his motion. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Mr. Clerk.

CLERK: 41 ayes, 0 nays, Mr. President, on the motion to suspend the rules and allow for cancellation of hearings.

SENATOR COASH: The motion is adopted. Next item, Mr. Clerk.

CLERK: Mr. President, the next bill for discussion is LB770, offered by Senator Carlson. (Read title.) The bill was introduced on January 4, referred to the Agriculture Committee for public hearing, advanced to General File. I have no amendments pending to the bill at this time, Mr. President. [LB770]

SENATOR COASH: Thank you, Mr. Clerk. Senator Carlson, you're recognized to open on LB770. [LB770]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. LB770 is brought at the request of the Department of Agriculture to clarify a definition of

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noxious weeds and to incorporate an updated standard governing weed analysis protocols. And very simply, on page 5 of the bill, specific plants are crossed out and left out of statute. And instead it simply reads that "Primary noxious weed seeds means the seeds of the plant designated by the director as a noxious weed." And so as in the future weeds are taken off that list, others are added in, this allows that to happen without having each one listed. And the department has requested that, the Ag Committee has approved it, and I would ask for your support on LB770. Thank you. [LB770]

SENATOR COASH: Thank you, Senator Carlson. Members, you've heard the opening to LB770. Those members wishing to speak: Senator...no one. There are no members wishing to speak. Senator Carlson, you're recognized to close. Senator Carlson waives closing. The question before the body is, shall LB770 advance? All those in favor vote aye; those opposed vote nay. Have all voted who wish? Mr. Clerk, please record. [LB770]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB770. [LB770]

SENATOR COASH: LB770 does advance. Next item, Mr. Clerk. [LB770]

CLERK: LB771, Mr. President, a bill by Senator Carlson. (Read title.) Bill was introduced on January 4 of this year, referred to the Agriculture Committee, advanced to General File. There are committee amendments pending, Mr. President. (AM1707, Legislative Journal page 309.) [LB771]

SENATOR COASH: Thank you, Mr. Clerk. Senator Carlson, you're recognized to open on LB771. [LB771]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. LB771 was brought at the request of the Department of Agriculture to update provisions of the Nebraska Pure Food Act to incorporate provisions and concepts as contained in the 2009 Food Code. The bill also increases statutory maximum permit and inspection fees charged under the act. I will return to the fee provisions later. The Nebraska Pure Food Act is a primary body of state law regulating retail food establishments--groceries and restaurants. The Pure Food Act establishes standards for sanitation, preparation, storage, and accurate presentation of food items. Nebraska is among the majority of states that incorporate the model provisions of the Food Code, a publication of the U.S. Public Health Service Food and Drug Administration. The Food Code is not federal law or federal regulation, however, it provides a uniform system of regulation to ensure that food at retail is safe, properly protected and presented. The Food Code is updated every four years to incorporate regulatory experience and advances in understanding risk factors for food-borne illness. The Nebraska Pure Food Act currently incorporates the provisions of the 2005 code and this bill would bring it up to the 2009 code. There

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are two handouts that review provisions of this bill. I'd invite you to look at those as far as details are concerned. Recall and remember and realize that in the United States and in Nebraska we have the safest, the best food supply in the world and we want to keep it that way. The department wants to keep it that way and so they bring their regulations to coordinate with the 2009 Food Code. The Nebraska Pure Food Act incorporates inspection program fee and cash fund management recommendations arising from a 2001 interim study of the Agriculture Committee. Nebraska Pure Food Act fees are determined annually by statutory formula within a statutory maximum to achieve no more than a 17 percent cash fund carryover balance or a two month reserve. The current statutory maximum was enacted in LB74 in 2007. And as a part of this bill it takes those fees, if you look at those fees and the increase, it's to allow for a five-year period where no other requests for increases should be necessary. And we had no opponents to the bill. We had many testifying in support of the bill. So I would ask for your support in LB771. Thank you. [LB771]

SENATOR COASH: Thank you, Senator Carlson. As the Clerk has stated, there are amendments from the Agriculture Committee. Senator Carlson, you're recognized to open on the Agriculture Committee amendments. [LB771]

SENATOR CARLSON: Thank you, Mr. President. The committee amendment omits a revision requested on page 8 of the bill. As introduced, LB771 would increase a late fee imposed for failure to timely remit annual license and inspection fees. Currently, the late fee is 50 percent of the fee amount, otherwise due if one month late, and rises to 100 percent of the fee otherwise due after two months' delinquency. LB771 would have immediately established the late fee at 100 percent after one month. The committee amendment omits the requested change. After discussion, the committee believed that we should revert back to current law, which is 50 percent after one month and 100 percent after two. So I would ask for your adoption of AM1707. Thank you. [LB771]

SENATOR COASH: Thank you, Senator Carlson. You have heard the opening to LB771 and the committee amendments. Those wishing to speak: Senator Louden, you are recognized. [LB771]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator Carlson yield for a question? [LB771]

SENATOR COASH: Senator Carlson, will you yield? [LB771]

SENATOR CARLSON: Yes. [LB771]

SENATOR LOUDEN: Senator, as I look this over this has, in the back pages of the bill, has mostly to do with cooking meats and, oh, foods that have to be cooked at certain degrees for safety measure. Does this...anything I see in here, and I haven't read it

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closely enough, but I'm concerned, is there anything in here that has anything to do with these people that are baking cakes or cookies or, what would they say, nonperishable food, I guess, like that? Is there anything...that Food Code doesn't have any...doesn't address anything in that category? [LB771]

SENATOR CARLSON: I don't believe it does. This refers more to cooling than it does to heating. And there's a provision there that temperature on cooling and keeping food at a certain temperature, supposed to be 41 degrees. There are units out there that only go down...will only keep it at 45 degrees. So it was kept in law that those refrigeration units that are still being used could continue to be used, but the food could only be kept for four days. If they replace that with a new unit that keeps it at 41 degrees, they can keep it for seven days before discarding it. So it has to do with the cooling, not the cooking. [LB771]

SENATOR LOUDEN: Yeah. And I notice that some of the food has to be at 135 degrees Fahrenheit and that's the reason I'm wondering if that's more for meats and perishable cooked products. And what I'm wondering is if we have these people that are going out here for entrepreneurship and, oh, doing cakes or cookies or baked goods like that and people that sell stuff at the farmer's markets, which I presume this doesn't affect at all because that's in a different part of the statutes, but this doesn't affect what those people do in any way that I can see. Is that correct? [LB771]

SENATOR CARLSON: I would agree with you. And I know there's no intent on the part of the department for that to affect those activities that are going on. So the answer is, no, it doesn't affect them. [LB771]

SENATOR LOUDEN: Okay, thank you, Senator Carlson. Thank you, Mr. President. [LB771]

SENATOR COASH: Thank you, Senator Louden. Senator Harms, you're recognized. [LB771]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Carlson, would you yield to just one question for me, please? [LB771]

SENATOR COASH: Senator Carlson, will you yield? [LB771]

SENATOR CARLSON: Yes. [LB771]

SENATOR HARMS: How does this impact food vendors, you know, when you go to the parades and all those sort of things? I know there have been some special provisions made historically for them. How does this impact them in regard to the products that they might be selling at the fair or the parades? [LB771]

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SENATOR CARLSON: Thank you, Senator Harms, because that's a good question. There's nothing in this bill that affects the way things are currently done in those instances. [LB771]

SENATOR HARMS: Thank you, Mr. President. And thank you very much, Senator Carlson. Thank you. [LB771]

SENATOR COASH: Thank you, Senators Harms and Carlson. Seeing no other members wishing to speak, Senator Carlson, you are recognized to close on the committee amendment. Senator Carlson waives closing. The question before the body is, shall AM1707 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Mr. Clerk, please record. [LB771]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB771]

SENATOR COASH: The amendment is adopted. We now return to discussion on LB771. Seeing no members wishing to speak, Senator Carlson, you're recognized to close on LB771. [LB771]

SENATOR CARLSON: Thank you, Mr. President. And thank you for questions and the discussion that's taken place on LB771, and I ask for your support. Thank you. [LB771]

SENATOR COASH: Thank you, Senator Carlson. Members, the question before the body is, shall LB771 advance? All those in favor vote aye; those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB771]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB771. [LB771]

SENATOR COASH: LB771 does advance. Mr. Clerk. [LB771]

CLERK: Mr. President, the next bill, LB536 is a bill by Senator Wightman. (Read title.) Bill was introduced on January 18 of last year, at that time referred to the Judiciary Committee for public hearing, advanced to General File. There are Judiciary Committee amendments. (AM1668, Legislative Journal page 310.) [LB536]

SENATOR COASH: Thank you, Mr. Clerk. Senator Wightman, you're recognized to open on LB536. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. LB536 would enact the Nebraska Uniform Real Property Transfer on Death Act. The bill provides an asset-specific mechanism for the nonprobate transfer of land or any real

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estate. The Nebraska Real Property Transfer on Death Act mirrors the Uniform Real Property Transfer on Death Act, promulgated by the Uniform Law Commission in 2009. The Judiciary Committee amendment, which follows, becomes the bill. The committee amendment represents three years of work to fine-tune this uniform law to conform with other laws in the state of Nebraska. In 2010, LB736, which was really a forerunner of this bill, was introduced for discussion purposes only as a first draft of the Uniform Real Property Transfer on Death Act. And the idea here was to get feedback from the Bar Association with regard to the feeling toward this Uniform Transfer Act. Over the interim, an in-depth study was conducted pursuant to LR488. The LR488 interim study provides a detailed explanation of the legislative intent of LB536 and is a part of the record. Changes were made to LB736 conforming the Uniform Law Commissioners Act to Nebraska law and addressing concerns raised by members of the Nebraska Bar Association, the Nebraska Land Title Association, and the Nebraska Department of Social Services. Last year, Douglas County and Lancaster County and the Nebraska Association of County Officials raised concerns about a loss of inheritance tax revenues that have become so vital to fund county government functions. It is my pleasure to report to you that over the interim we were able to reach a compromise presented to the Legislature as AM1668. I wish to thank all of the groups and the interests that have come together. The act provides a new tool to meet the needs of Nebraskans to prevent owners of interest in real property to execute and record a transfer on death deed or a TOD. Transfer on death, or TOD, enables an owner of real property to pass the property to a beneficiary on the owner's death simply, directly, and without probate. And I'll get into that more later but there's several other means that this can be done, each of which had some problems with them, and none of these are a total cure-all. By this deed the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries have no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the transfer on death deed. Under current law, a deed with a retained life interest, which is something that is used frequently by attorneys who practice in this area, is often used to transfer property to a beneficiary. But the owner loses control over that remainder interest upon execution and recording of that deed, and the transfer cannot be revoked. The remainder interest is subject to execution to creditors and beneficiaries. Normally, this would be a transfer of property to a family member, usually one or more of the children. The act that we're discussing here establishes the requirements for the creation and revocation of a transfer on death deed and clarifies the effect of the transfer on death deed on all parties while the transferor is living and after the transferor dies. The Nebraska Real Property Transfer on Death Act provides the transfer on death deed must contain all the essential elements and formalities of a properly recordable deed executed during the life of the maker. The transfer on death deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the register of deeds where the property is located. The capacity requires the same legal capacity that a person would have to have to make a will or to execute a deed. Just to give you a little

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more discussion of how this may vary from other tools that are used, for example, the legal life estate I discussed previously creates a current interest that cannot be revoked when they retain a life interest and there is actually a transfer of a remainder interest. That creates problems to practitioners. A lot of times people will come in and they'll want to put something in joint tenancy with themselves and all of the children. That frequently creates problems, too, because if it's a joint tenancy deed, by the very nature of that deed there is an automatic right of survivorship. And if one of those children should pass away, then that child would be left out. So almost every method you talk about is a long ways from a total cure-all of all situations that might arise. But what we're doing here basically is saying, just like now, you can walk into a bank and take a million dollars or a billion dollars worth of property. I don't think too many that we know have that, a million dollars worth of property, transfer the property into a payable on death account, and all of that will pass just exactly as this land will, but it has no effect during the person's lifetime in that the person can change that beneficiary designation, he can revoke it and put it back in his name alone or her name alone. And so it really is bringing real estate kind of in line with how other property, how other investments are handled. The beneficiary does not have any interest that, for example, a creditor might execute, get a judgment and execute on that property, because it creates no present interest in the property. So basically, it's just another tool in the tool chest of the lawyer who is handling it. I don't see it being used anywhere near all circumstances, but it might be used if somebody comes in just prior to death and they want to transfer a house or a small amount of assets. I think it would take a lot more thinking than that or should before one would transfer a number of farms under this act. But it does give one more possible method of transferring it and avoiding probate in such a situation for a client of a lawyer. So I will discuss the changes made, there will be changes made by the committee amendment, and I'll discuss those after Senator Ashford's opening. It did come out of committee with an 8-0 vote, that was after a lot of amendments or changes were made and addressing those particular issues. So I'll wait and address the committee amendment later. Thank you, Mr. President. [LB536]

SENATOR COASH: Thank you, Senator Wightman. Mr. Clerk, items? [LB536]

CLERK: I do, Mr. President. Your Committee on Natural Resources, chaired by Senator Langemeier, reports LB1043 to General File with committee amendments attached; that's signed by Senator Langemeier. Senator Council has an amendment to LB190 to be printed. A series of name adds: Senator Conrad to LB989; Senators Lautenbaugh and Nordquist to LB1128; Senators Nordquist and Mello to LB1015; Senator Cook, LB1145, LB1146; Senator Howard to LB1016. (Legislative Journal pages 421-423.) [LB1043 LB190 LB989 LB1128 LB1015 LB1145 LB1146 LB1016]

And I do have a priority motion. Senator Langemeier would move to adjourn the body until Friday morning, February 3, at 9:00 a.m.

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SENATOR COASH: Members, you've heard the motion to adjourn until Friday at 9:00 a.m. All those in favor say aye. Those opposed, nay. We are adjourned.