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Floor Debate
February 04, 2013

[LB5 LB21 LB24 LB28 LB29 LB36 LB39 LB40 LB72 LB78 LB91 LB137 LB147 LB173
LB210 LB213 LB279 LB290 LB360 LB484 LR20 LR43]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the eighteenth day of the One Hundred Third Legislature, First Session. Our chaplain for today is Father Ernesto Medina from St. Martha's Episcopal Church in Papillion, Nebraska, Senator Smith's district. Please rise.

FATHER MEDINA: (Prayer offered.)

SPEAKER ADAMS: Thank you. I call to order the eighteenth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

SPEAKER ADAMS: Thank you, Mr. Clerk. Are there any corrections to the Journal?

CLERK: I have no corrections.

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

CLERK: There are, Mr. President. Your Committee on Enrollment and Review reports LB279, LB290, LB173, LB39, and LB21 to Select File, some of which have Enrollment and Review amendments attached. Banking Committee, chaired by Senator Gloor, reports LB210 to General File. Government Committee, chaired by Senator Avery, reports LB40, LB137, LB78 to General File. I have hearing notices from the Banking, Commerce and Insurance Committee, the General Affairs Committee, and the Judiciary Committee, signed by their respective Chairs. An amendment to be printed to LB72 by Senator McCoy, and a confirmation hearing report from the Government Committee, signed by Senator Avery. That's all that I have, Mr. President. (Legislative Journal pages 343-348.) [LB279 LB290 LB173 LB39 LB21 LB210 LB40 LB137 LB78 LB72]

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

CLERK: The first item is a confirmation report from the Transportation and Telecommunications Committee. Senator Dubas reports on four appointments to the Motor Vehicle Industry Licensing Board. (Legislative Journal page 328.)

SPEAKER ADAMS: Senator Dubas, as Chair of Transportation and

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Telecommunications, you're recognized to open on the confirmation report.

SENATOR DUBAS: Thank you, very much, Mr. Speaker. Good morning, good Monday morning, colleagues. We had four appointments before the Transportation and Telecommunications Committee for the Motor Vehicle Industry Licensing Board. Two of those were reappointments and then two were new appointments. Mr. Paul Gerber, who grew up in his family business, he owns Paul Gerber Auto Sales, as I said, is a reappointment. You know, I'll make a comment just in general about all four of these appointments. It's very clear that these people go above and beyond. They're very committed to their industry. They understand the importance of this licensing board. You know, most of the time we hear in here about too much regulation and we want government out of our lives, but these people all, as members of this licensing board, understand the need for professionalism in their industry and their willingness to serve on this board to make sure that what I heard from all four...well, the committee heard from all four of them were the importance of protecting consumers and making sure that consumers knew when they were doing business in looking for their vehicles, or whatever they were looking for, that they were going to deal with reputable businesses. So, Mr. Gerber, as I said, has his own family business. He grew up in Omaha and has over 40 years of experience. He's also the past president of the Nebraska Independent Auto Dealers Association. So that is the reappointment for Mr. Paul Gerber. The next reappointment would be with Mr. Jeff Scherer. Do we need to do these one at a time or we can do all? One report, all right, so that would be my introduction for Mr. Paul Gerber then. Not understanding the sign language, excuse me, Mr. Clerk. Okay. All right. The next appointee is Mr. Jeff Scherer and he is from Beemer where he's the chief financial officer for Smeal Fire Apparatus. They deal with manufacturing of firefighting vehicles. Mr. Scherer had an outstanding list of community involvement, including the Nebraska Diplomats; the Dream!t Do!t; West Point Chamber of Commerce; and the Nielsen Community Center advisory board. He's been an accountant for 26 years. Again, he brings a different but a very good perspective to the Motor Vehicle Licensing Board. The next appointment is Mr. Ricky Pearson. Mr. Pearson is from Hartington, Nebraska. He's the owner of Pearson Motor Company since 1995. His perspective and what he's able to bring to this licensing board is, you know, being on the border with South Dakota and Iowa, understands the border bleed issues and the competitive advantages and disadvantages of there. Again, brings a great deal of experience and understanding to this position. The final appointment is Ms. Angela Quinn. She is to fill a vacancy and will serve the two remaining years of the term. She's from Omaha. She's a partner in the Baxter Performance Auto Group since 1992; a dealership operator for Baxter Chrysler, Jeep, Dodge, Mercedes-Benz of Omaha; Performance Chrysler, Jeep, Dodge of La Vista; Performance Toyota of La Vista; and Performance Volkswagen; and a stockholder in several of the major car dealerships in Omaha. So again, with all of these appointments they bring many, many years of experience and understanding of the industry. And as I've said, their...all four of them, their overarching concern was consumer protection and making sure that the industry is conducting itself in a manner

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that leads to that confidence. With that, those are the four appointments and reappointments for the Motor Vehicle Industry Licensing Board.

SPEAKER ADAMS: Thank you, Senator Dubas. Members, the floor is now open for discussion on the confirmation report. Senator Dubas, you are recognized to close on the report. Senator Dubas waives closing. The question is the adoption of the report offered by the Transportation and Telecommunications Committee. All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 348.) 39 ayes, 0 nays, Mr. President, on adoption of the confirmation report as offered by the Transportation Committee.

SPEAKER ADAMS: The report is adopted.

CLERK: Mr. President, a second report by the Transportation and Telecommunications Committee involves the appointment of Rhonda Lahm as director of the Department of Motor Vehicles. (Legislative Journal page 329.)

SPEAKER ADAMS: Senator Dubas, as Chair of the Transportation and Telecommunications, you're recognized to open on the confirmation report.

SENATOR DUBAS: Thank you very much, Mr. Speaker. Rhonda Lahm is the new appointment for the Department of Motor Vehicles. She will be taking Director Bev Neth's place. Just like to take a moment to thank Director Neth for her years of service. She's brought a great deal of professionalism, and has always been very helpful with the Transportation and Telecommunications Committee and the issues that we deal with. Rhonda Lahm brings her own set of stellar credentials with her to this position. She served 32 years in state government with over 15 years in management and supervisory positions. She has a Master of Arts degree in management that she received in September of 2010 from Doane College. Her work experience goes...will, again, just speaks volumes to her ability to step into this position. She's worked currently at the Nebraska State Patrol in records management where she administers all aspects of the agency's records. She worked previously as a driver's license examiner, so she has that experience to bring to this position. She served, again, in the Nebraska State Patrol in administrative services, where she had oversight of information technology. And as we move more towards the use of technology in the DMV, this will certainly serve her well, that experience. She was a field service staff captain where she was commander and oversight of the police service dog, air wing, and community policing divisions. She also served from April '99 to September of '01 as the legislative liaison lieutenant in cooperation with the Governor's PRO Office. She...her initial foray into state government was through the Nebraska Corrections Office. She has a very in-depth understanding of the legislative process. She's familiar

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with the state budget process. She's also a certified mediator. She has many honors and distinctions that she has earned over the years. That again, just goes to show the type of qualifications that Ms. Lahm is bringing into this position. So it's with great pleasure that I bring forward this report in the confirmation of Ms. Rhonda Lahm for the director of the Department of Motor Vehicles.

SPEAKER ADAMS: The floor is now open for discussion. Senator Dubas, you are recognized to close on the confirmation. Senator Dubas waives her opportunity to close. The question before the body is the adoption of the report offered by the Transportation and Telecommunications Committee. All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 349.) 38 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SPEAKER ADAMS: The report is adopted. Mr. Clerk, we'll proceed on to the next item on the agenda.

CLERK: Mr. President, LR20 was a resolution originally introduced by Senator Lathrop. It calls for the Legislature to reappoint the special committee of the Legislature known as the Developmental Disabilities Special Investigative Committee. The resolution was introduced on January 11. The Speaker, per his authority, referred the matter to Reference Committee. The Executive Board conducted a public hearing. The Executive Board has reported the resolution to the floor for further consideration, Mr. President. [LR20]

SPEAKER ADAMS: Thank you, Mr. Clerk. Senator Lathrop, as Chair of the Developmental Disabilities Special Investigative Committee, you are recognized to open on LR20. [LR20]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning. LR20 would reconstitute the committee that we have generally referred to as the BSDC Committee. In 2008...maybe a little bit of background, since we have some new folks here, that might be useful as you consider LR20 and what this committee does. In 2008, the Legislature established the BSDC Committee with a resolution. That resolution was passed as a consequence or in response to the problems at BSDC. Those problems, which included abuse and neglect in the state-run institution, and this is an institution that we run in Beatrice, Nebraska, for the developmentally disabled. Those folks are residents there, they live there, they don't leave there except for visits and for...to receive services. It's an institution in an institutional setting. There were problems that became evident in 2008. They were so acute that the federal government came in, in two ways. First, the Department of Justice came in, conducted an investigation, and concluded that we were doing such a poor job at BSDC that we were violating the civil

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rights of the people that lived there. There was a report. You're welcome to read it. It would make you sick to read what was happening down there, and it was bad enough to violate the civil rights of those people that lived there. BSDC is run on a match. We have state funds and we have funds from the federal government, Medicaid. Medicaid decertified the place and we stopped receiving funds while BSDC was decertified. That went on for about two years, probably cost the state of Nebraska about \$50 million. The Legislature's response to the terrible conditions at BSDC prompted then-Speaker Mike Flood to put a resolution in to establish the special investigative committee with broad powers to oversee the developmental disabilities, BSDC, and services provided to that population. We have renewed this committee from time to time. I had hoped to not renew the committee. It was my goal to not renew the committee this year, but for reasons that I'll talk about in a moment, I think it's going to be necessary. I can tell you that the Beatrice State Developmental Center has made substantial progress in improving the conditions. They have been recertified and the federal money has been restored, which is a significant step in the right direction. The Department of Justice entered into a consent decree with the state of Nebraska. That is where the Department of Justice said, these things need to happen, and they itemized what needs to happen with the provision of care for the developmentally disabled, and we agreed to do them. And most of it, if not all of it, should have been done in a year, and we are three years out and it's not done. So the purpose in reconstituting the committee is to continue to provide oversight while the state of Nebraska tries to comply, continues its efforts to comply, with the consent decree that they agreed to in federal court with the Department of Justice. There are also other reasons. The waiting list, which is the people who are waiting for services, is not yet where it should be. We need to provide oversight of that. We need to watch and provide oversight of the Beatrice State Developmental Center as it goes under the direction of a new director. We need to watch and observe the new rate methodology that's been proposed to make sure it's fair to the consumer and fair to the taxpayer and fair to the providers. Those are the responsibilities that the committee will assume and continue to do. Normally, the developmental disabilities would be a subject matter for the Health Committee. That's the committee that would normally have oversight responsibility for that. I've talked to Senator Campbell. She has a lot on her plate with the child welfare issues that we started to work on last year. That's a busy committee to start with. I've agreed that we would continue the committee, with your approval. When we have hearings and when we do work, we generally have the Health Committee participate so that they're aware of and involved in the work that we do so that we can make a seamless transition at such time as Senator Campbell and I can agree the Health Committee is ready to assume those responsibilities. With that, I would encourage your support of LR20, and I'd be happy to answer any questions. [LR20]

SPEAKER ADAMS: Thank you, Senator Lathrop. Senator Coash, you're recognized.
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SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. I wanted to get up and speak a little bit about LR20. I serve on that special committee. It's my pleasure to do so. I do work in the field of developmental disabilities and I wanted to bring a few things to my colleagues' attention. Senator Lathrop covered a lot of what we do in that committee. I do support the extension. The tide is turning at BSDC, but it is turning slowly. As Senator Lathrop mentioned, we started this process because the Department of Justice came in and saw some pretty horrendous things going on. But we lost our certification and that was important mostly for...first and foremost, for the people who live there. But it's also important to the taxpayers because when that happened, we lost a lot of money. As Senator Lathrop mentioned, we did get recertified. And then in the middle of that, we found some horrific additional abuse that happened. There were five individuals who did some terrible things to the most vulnerable citizens of our state. They did things that would make your stomach turn. They are now answering for that. Many of them already are answering for that in a court of law. Some of them are rightfully serving time in prison. But I want to make a point that the actions of those individuals are not reflective of everyone who labors at BSDC. There are many people who work there who were just as sick to see what happened as you or I would. But what happened at BSDC is the result of a culture that we have got to continue to work on. Preventing and addressing this kind of abuse is larger than just finding and punishing those who are responsible. There were people who knew that was going on, and for whatever reason, out of fear of losing their job, fear that nobody would listen, didn't say anything. And that points to a culture and it points to leadership, and we are continuing to monitor that. One of the biggest reasons for continuing this committee is to address those two things. We have to have leadership and we have to have oversight. This committee provides some of that needed oversight. So I will urge my colleagues to continue to support this committee. One other thing I want to talk about with regard to BSDC, and this is something that doesn't as much have to do with this committee, but it is something this body should continue to look at. When this committee was started, there were a little over 300 people getting services at BSDC. Today, there are around 130. Almost...and in the heyday, there were 1,000 people there. It's gone from a little over 300 when we started this, down to 130, and it cost \$50 million, combined state, federal, and cash funds to provide services to those 130 people. That's a little over \$2 million per person. Some day, colleagues, we're going to be sitting here talking about whether or not we can continue to support that. And that's a good discussion to have because that means that the people who need those services are going to be able to find it in community-based programs. But where else in appropriations would you find \$50 million worth of tax money to serve 130 people? [LR20]

SPEAKER ADAMS: One minute. [LR20]

SENATOR COASH: Thank you, Mr. President. Some day we'll talk about that, but it's a good opportunity to get up today and to shoot that to you, as my colleagues, so that you'll continue to think about that. But I...in closing, I will ask your support in the

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continuation of this committee. We have more work to do. We have to keep our eyes on this. If we don't do that, colleagues, we're going to find ourselves talking about more abuse in the future. Thank you, Mr. President. [LR20]

SPEAKER ADAMS: Thank you, Senator Coash. Senator Campbell, you're recognized. [LR20]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I will be very brief. I certainly support the extension of LR20, as Senator Lathrop has outlined to you. One of the most important responsibilities of the Legislature, in addition to setting policy by statute and appropriating funds and setting a budget, is the oversight responsibility of this body. Speaker Adams noted that in our conversation on this resolution, when it had its hearing, that this is probably the best example of the good use of a special committee in which we can hone in on a particular topic and issue and watch it very closely. I very much appreciate the coordination that Senator Lathrop and the BSDC Committee have made in working with the Health and Human Services Committee. They have been kind to invite us to a number of the hearings and share information, and Senator Lathrop's office has kept me apprised of any particular problems that may arise. This is an excellent use of a special committee and we should wholeheartedly support LR20. Thank you, Mr. President. [LR20]

SPEAKER ADAMS: Thank you, Senator Campbell. Senator Krist, you're recognized. [LR20]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues, and good morning, Nebraska. First of all, I'd like to just commend Senator Lathrop and his staff. I know Doug Koebernick has been extremely effective in reaching in areas that we needed to pay attention to, so thank you, Senator, for your attention in the matter and your leadership. Secondly, I'll say this for everyone, and I know those who have been here for a while and those that are new, you will make decisions on this floor, as Senator Coash alluded to in his time on the mike, that have to do with critical funding for service issues across the state. It is well worth your time to visit BSDC, Geneva, YRTC, some of our state facilities, lock-up facilities, detention facilities. Because when you vote, and you vote to fund those critical activities, you should see firsthand, in my opinion, what it is the money is going to, for, and who it is serving. I'd invite you to get out there and actually look at the facilities and visit to see what we are doing. BSDC has been around for a long time. I had a relative that came back from World War II and there was no place else for him to go. He lived the balance of his life and died at BSDC in a much different environment than exists today. Everything we do to make it a better environment at BSDC is part of our humanity. It's what needs to be done. Twenty is a small step to keep it forward and still provide the oversight that is needed at BSDC, and I'd ask you for your support to vote green on LR20. Thanks. [LR20]

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SPEAKER ADAMS: Thank you, Senator Krist. The Chair recognizes Senator Harms.
[LR20]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of LR20. I had the fortunate opportunity to serve on this committee from the very beginning. And I would tell you that Senator Lathrop and his staff did a phenomenal job in handling a very difficult issue. When we got into this particular problem at Beatrice, to be honest with you, I was shocked of the findings. And I wasn't sure that we would be able to truly find a solution to straighten it up. And what it really boiled down to when we got to the end, there just simply was no management in regard to that particular issue. With a lot of hard work and a lot of effort that was presented through Senator Lathrop's leadership, we were fortunate to get a handle on this, and without keeping this committee alive and constant over...constantly reviewing it, I have a fear that we might slip back to where we were before. And I don't think we can tolerate that. The oversight of this is extremely important, and I think over the next two years we can continue to monitor this. Then, I think, without any difficulty at all, the Health and Human Services Committee will be able to continue the monitoring. So I would urge you, colleagues, to be a part of approving this because it is important. We've made a big difference in a lot of people's lives who were mistreated, not treated appropriately, and what we found is that there's no excuse for what occurred. So I thank Senator Lathrop for continuing to have this passion to get this completely at a point where we feel really totally comfortable with it. And so I'd urge you to support LR20. Thank you, Mr. President. [LR20]

SPEAKER ADAMS: Thank you, Senator Harms. Senator Wallman, you're recognized.
[LR20]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, would urge strong support for LR20. And Senator Lathrop's staff as well as my staff, Jeni, has done a lot of work on this. And the minute I got into office, immediately I was called down there to look into things. And there's lots of good people working in there. Just a few bad apples caused a horrendous amount of problems in a hurry. But once we got management squared around and the Department of Justice, we listened to what they had to say for us. And, Senator Lathrop, I really appreciate what you did. And please vote for LR20. Thank you, Mr. President. [LR20]

SPEAKER ADAMS: Thank you, Senator Wallman. Senator Karpisek, you're recognized.
[LR20]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I, too, would like to put my support behind LR20. I've been on the task force for four years now and I've seen the positive effects that it has had. I have no doubt in my mind, if we wouldn't have started this, that BSDC would be closed today, and that is not what we need as a state. The people who live there that make it their home absolutely deserve to have the

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best life that's possible for them. That was not the case before. I don't think that some people wanted BSDC to be open anymore. And I think that things were pulled out of there, and it was just not watched close enough, and it was in a death spiral. There's a lot of jobs there. They're good jobs, they're very hard jobs. I know a lot of people that work there. They're tough jobs and I very much appreciate them. It does cost a lot of money, I agree, but these people absolutely cannot help that. If we want to look at what the costs are, I think we should have put more money in there to begin with and we wouldn't be in the spot we're in now or have been. So I appreciate what the Legislature has done and I think that we need to keep our eye on it. It's getting better. And as Senator Wallman said, I think a lot of things have turned around, and we just need to keep helping those people. Thank you, Mr. President. [LR20]

SPEAKER ADAMS: Thank you, Senator Karpisek. Senator Hadley, you're recognized. [LR20]

SENATOR HADLEY: Mr. President and members of the body, good morning. Another great week in Nebraska. I stand in full support of this legislative resolution. I think great strides are being made in Beatrice. But I want to tell you just a few minutes about an organization that flies a little under the radar. It's called Mosaic. Mosaic is an ICF/MR. In essence, it's a nonprofit, private BSDC. And they stepped up to the plate greatly over the last few years to pick up the slack that is needed in this state to handle the people that need this kind of help. And I hope you remember that name, Mosaic, because hopefully later on in this session, you're going to hear a bill that I'm bringing that will continue to help Mosaic do the type of work that it's doing to complement BSDC and provide other opportunities for those people that need this kind of help in the state of Nebraska. So I ask you just to remember the name Mosaic and not be surprised a little later when we have a bill dealing with them. Thank you very much. [LR20]

SPEAKER ADAMS: Thank you, Senator Hadley. Senator Lathrop, you're recognized. Senator, there are no other senators in the queue if you wish for this to be your closing. [LR20]

SENATOR LATHROP: Let me speak...I'm going to speak briefly to something that you just heard Senator Coash say, and Senator Hadley. That is, at some point we will be getting...and it will probably be after I'm term limited, we'll have a discussion about the future of BSDC. And I can tell you what the gold standard is to have all of these individuals with developmental disabilities in the community. That's the goal in the end. That's where we provide them with the highest quality of life and the best opportunities is in a community setting. And we talked about that when we established this committee in the beginning, which is, what's it take to get people to leave BSDC? And early on, there was a push, let's force them out. Let's find some way to force them out. We went through that with the...with losing our ability to provide medical care at BSDC and off went 40-some people, some of whom died shortly after that. It was terrible. It was

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terrible. Our conclusion in that committee is this, and it's this simple. It is, we will have BSDC. Those folks will leave when there are better alternatives in the community-based setting. The Mosaics of the world that you heard Senator Hadley talk about, great organization, provides great care for these folks and a good life. There are a lot of programs and they depend upon providers, and now I'm going to join Senator Hadley in explaining something to you that you may not be familiar with, but we have providers in mental health, we have providers in developmental disabilities, and we have them in other aspects, child welfare. If we don't treat those people like partners, if we look at them like a place to squeeze money from to balance the budget, we will never have the services we need to bring these people into the community. Mental health is a perfect example. Closed a bunch of regional centers; said we were going to spend the money on the providers in the community-based programs. It didn't happen. We didn't make good on our commitment to provide the community-based mental healthcare. The problem for the developmental disability population is (a) having the resources to provide the services, and then (b) having the providers in place that will do it, that will come to Nebraska to provide those services, because we need them. We need people to come into Nebraska and provide community-based services for the dual diagnosed, the developmentally disabled, and the people with mental health issues. And we can't get them to come here because Nebraska has become a place where providers are reluctant to come here and provide their services because they don't get paid, or we're cutting their budget, or we don't give them the resources they need to do the job that we ask them to do, and we don't treat them like partners. When that happens, when we have the community-based programs in place, when we can entice the families to have their loved one leave BSDC, we will have that conversation, and right now when they look to the communities, they're afraid. They're afraid that the services won't be there. They're afraid that the services will be cut, and they don't have the confidence to leave BSDC. And that's why we continue to spend the money we spend there. And good people doing it, believe me, they are good people from Senator Wallman's district, primarily, who are providing those services. But it is a lesson, as Senator Hadley said, in taking care of the providers. They are our partners in those undertakings in providing care to the mentally ill children and to the developmentally disabled. And as Senator Hadley said, watch for those bills to come along providing the appropriate appropriations for those folks, because they are our partners. Thank you. [LR20]

SPEAKER ADAMS: Thank you, Senator Lathrop. Senator Ashford, you're recognized. [LR20]

SENATOR ASHFORD: Thank you, Mr. Speaker. And much has been said on this issue this morning and over the last several years, but let me just focus on the importance of this issue as it relates to the power and authority of this body. Lest we forget, the Legislature, on its own initiative, under the leadership of Senator Lathrop, took on an issue of vital importance, vital importance to our state and to the people of the state. The leadership that was shown by Senator Lathrop was incredible, was incredible, and

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the leadership of the entire committee that worked on this issue from the very beginning when there was no answer, there was no appropriate response. The children and the people who are less fortunate and who are disabled are the most important people that we serve because they are vulnerable, because they do not have what the rest of us have in many cases. So taking on this issue as this Legislature did and as Senator Lathrop did and all the rest of the members of the committee, and the Legislature as a whole that came to grips with the problem as the onion was peeled back and the importance of the issue became paramount to this body, was a proud moment for this body and should be so viewed by the state of Nebraska and all the citizens of the state. This session we're going to be dealing with juveniles, with young children who are not getting adequate care. Senator Campbell has shown incredible leadership, taking on an issue that for years has lied dormant. We have in my committee a juvenile justice system that is close to beyond repair. Children are mentally ill and are not getting service. Children come back into their communities without adequate community services. We are spending resources inefficiently and ineffectively every day. In fact, I would go as far as to say that there are children in this state who risk death every single day because of inadequate care and mental illness. It is a disgrace. May I have a gavel, please? It is an absolute disgrace. It is deplorable and it cannot continue. Much like Senator Lathrop and his leadership in this Beatrice issue, we as a Legislature must rise to the fore. We must stand up for the children of our state with Senator Campbell and the Health Committee and with the members of the Judiciary Committee, and with the entire Legislature behind us, we must find an answer. If we don't, children will continue to be sick. Children will continue to commit violent acts. It is not acceptable. It is not acceptable. And in the spirit of Beatrice and in the spirit of what Senator Lathrop has done with his committee, we must fortify ourselves to this new debate. We must fortify ourselves to this new debate. We cannot and must not let this legislative session go by without substantive changes to our...for our children,... [LR20]

SPEAKER ADAMS: One minute. [LR20]

SENATOR ASHFORD: ...for our juveniles, and we must dramatically change a system that is entirely out of whack. It is second-class and it is hurting, not helping, our juveniles. Thank you, Mr. Speaker, and thank you, Senator Lathrop, and to the entire committee for the leadership shown on this issue. [LR20]

SPEAKER ADAMS: Thank you, Senator Ashford. Senator Lathrop, there are no other senators in the queue if you wish to close on LR20. [LR20]

SENATOR LATHROP: I will, thank you, Mr. President and colleagues. Thank you for the discussion and the words of support. I want to recognize some people that helped this committee. I will say that I've been blessed to chair a committee that is a dream team. And it's interesting, when you bring somebody from Appropriations, and two people that live down in that area, and folks who have personal experience with the

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developmental disability community, you get a great committee. There are people that do the day to day, answer the phone calls from those Nebraskans who are trying to find services, and I want to recognize three of them today on the mike: Doug Koebernick in my office has become the go-to person, as has Jeni Bohlmeier in Senator Wallman's office, and finally, Gary Weiss in the Ombudsman's Office. He has devoted countless hours to listening to the concerns of people who are trying to access services, listening to the concerns of the families who are trying to find services for a child with developmental disabilities and mental health. What a challenge that's been. These folks are the eyes and ears and they're the people on the ground and I just wanted to recognize them as I ask you for your support of LR20. Thank you. [LR20]

SPEAKER ADAMS: Thank you, Senator Lathrop. Members, the question is the advancement of LR20. All those in favor vote aye; all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LR20]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of LR20. [LR20]

SPEAKER ADAMS: The resolution passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR20 and LR43. Mr. Clerk. [LR20 LR43]

CLERK: Mr. President, some items if I might. Retirement Systems gives notice of hearing. Senator Ken Haar, an amendment to be printed to LB91. And an announcement: Senator Schilz, as Chair of the Agriculture Committee, will have an Executive Session at 11:00 this morning under the south balcony; the Agriculture Committee at 11:00, south balcony. That's all that I have, Mr. President. (Legislative Journal pages 350-353.) [LB91]

SENATOR KRIST PRESIDING

SENATOR KRIST: Thank you, Mr. Clerk. Next item on the agenda.

CLERK: Mr. President, LB147 is a bill introduced by Senator Gloor. (Read title.) The bill was introduced on January 11 of this year, referred to the Banking, Commerce and Insurance Committee. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB147]

SENATOR KRIST: Thank you. The Chair recognizes Senator Gloor to open up on LB147. [LB147]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. LB147 was introduced at the request of the Department of Insurance, the director of the Department of Insurance specifically. The bill would implement a new federal mandate imposed

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pursuant to the federal Public Health Service Act which is part of the federal Patient Protection and Affordable Care Act, the ACA, to adopt a process for external review. The federal mandate requires state adoption, at a minimum, of the consumer protections set forth in the Uniform Health Carrier External Review Model Act issued by the National Association of Insurance Commissioners, the NAIC. This model requires health insurers to subject their claims decision making to an external review which allows a policyholder, in other words a patient, to get an independent review of adverse decisions in such areas as admission, availability of care, and continued stay. LB147 would adopt these uniform standards for establishment and maintenance of external review procedures and would assure that covered persons have the opportunity for an independent review of an adverse benefit determination. Because currently Nebraska does not have such a law in place, the federal government is operating the program under the authority of the Affordable Care Act as it does in 11 other states. Nebraska is one of fewer than five states without an external review law currently in place. Under current Nebraska law, consumers with serious medical conditions are sometimes denied access to promising treatment regimens when the insurer deems treatment experimental and investigative. Treatment may also be denied because the insurer determines it is not medically necessary or not provided in the proper setting. LB147 would allow insureds to have these denials reviewed by an independent third-party reviewer. LB147 would require that insurers notify insureds of their right to an external review. It would set out separate procedures for standard external reviews, expedited reviews, and reviews of decisions denying coverage on the grounds that the healthcare service is experimental or investigational. The bill would also adopt standards for independent review organizations and clinical reviewers. Nebraska currently has an internal review law requiring insurers to review their decision making internally. That law has been preempted to some extent by federal law now. This has led to additional confusion for insurers in complying with state law. This is...currently, there are two levels of internal review required in Nebraska, but under federal law only one such level of review is allowed, and the second level of internal review currently required in our statute 44-7309 of the Health Carrier Grievance Procedure Act would need to be repealed. The bill does that. The NAIC, which is again the National Association of Insurance Commissioners, worked on adopting a model to comply with the federal law, and the director pointed out to the committee that Nebraska served on the NAIC committee, received comments on that model not only from other state insurance regulators but also from insurers and consumers as well. LB147 would impose no identifiable fiscal impact on the Department of Insurance. The department's role under LB147 would be limited largely to assignment of independent review organizations. Insurers...and this is an important point, insurers would be responsible for reimbursing independent review organizations for the cost of this. Based on information regarding the current federal program in this area, the director told the committee the department expects very limited number of external reviews to be requested under the terms of this bill; therefore, the department believes this bill would have no fiscal impact. I ask for your support of this important bill. Thank you, Mr. President. [LB147]

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SENATOR KRIST: Thank you, Senator Gloor. The floor is now open for discussion on LB147. The Chair recognizes Senator Lathrop. [LB147]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning, again. May I address Senator Gloor, please? [LB147]

SENATOR KRIST: Senator Gloor, will you yield? [LB147]

SENATOR GLOOR: Certainly. [LB147]

SENATOR LATHROP: Senator Gloor, the point of this bill is for health insurance policies issued in the state of Nebraska. If you want to get care and the doctor's office calls the health insurance company and says, we're about to do thus-and-such a procedure on your insured, are you okay with that or will you authorize it, and then they say no, what this bill does is give them a process, independent of the insurance company, to have that decision reviewed. Is that true? [LB147]

SENATOR GLOOR: That is correct, although by way of clarification, Senator Lathrop, there will still be a first round of review that the insurance company does. But the second round in this case currently done by the insurer will now be done by an external review organization. [LB147]

SENATOR LATHROP: So the policyholder contacts the health insurance or the provider perhaps. They get an adverse decision. The first thing the policyholder does is appeal to the insurance company and say, I have some more medical evidence, some other things I'd like you to consider, here's my argument, will you please cover it? [LB147]

SENATOR GLOOR: Correct. [LB147]

SENATOR LATHROP: The second step then would be this independent review. [LB147]

SENATOR GLOOR: Correct. [LB147]

SENATOR LATHROP: I got a couple of questions about that. The first one is would this cover policies that are otherwise covered by ERISA, the Employee Retirement Income Security Act of the federal government? Okay. [LB147]

SENATOR GLOOR: My immediate assumption with that is, no, because usually state statutes do not cover. But that's a great question. We'll get an answer for that for you. [LB147]

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SENATOR LATHROP: Okay. There's a preemption issue with ERISA and think ERISA permits states to regulate insurance, and so I'll...we'll get back to that perhaps before Select File. Did the feds dictate what was going to be in or what we would have in LB147? [LB147]

SENATOR GLOOR: Yes, the feds did to a certain extent...excuse me, certain intent, except what we end up with and what we're adopting here went through this National Association of Insurance Commissioners who took the federal regs, then sat down with it, and developed what sits before us as proposed language. [LB147]

SENATOR LATHROP: Okay. Next question I have is there is an exclusion for disability policies. In other words, this independent review will be available for someone whose health insurance plan has refused to pay for something, but if we looked at someone with a disability policy and they'd been turned down, this review is not available to them, an independent review. [LB147]

SENATOR GLOOR: Correct. This would address what we would consider as the major medical component of health insurance plans. [LB147]

SENATOR LATHROP: Did the feds dictate or did this organization dictate that disability policies be excluded? [LB147]

SENATOR GLOOR: As best I know, and again we'll get a specific answer to this, it's not spoken to under this specific section of the Affordable Care Act relating to, again, traditional insurance plans, major medical plans, and the review process or external review process. [LB147]

SENATOR LATHROP: Okay. I'm going to...thank you, Senator Gloor. I got a couple of things I'd like to take up on Select File, questions I'm going to have, and I'd like to provide a little bit of background if I can. When you get a health plan, a disability plan, or some other benefit, your pension, through your employer, assuming your employer is not a political subdivision or the state of Nebraska, it is covered by a federal statute called ERISA, the Employee Retirement Income Security Act. That statute provides the rules for the dispute resolution if you get into a beef with your insurance company. [LB147]

SENATOR KRIST: One minute. [LB147]

SENATOR LATHROP: So if you have a health insurance plan, the health insurance...and you don't get to just sue your health insurance plan, right? You want to have care; they won't provide it. The old way was you go to the courthouse, get it in front of a judge, and the judge makes a decision: Yeah, the medical evidence suggests that this isn't experimental, it should be covered. The order is entered; it's covered.

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Under ERISA, you get a couple of appeals with the insurance company, with the insurance company that would have to pay if you win. And Senator Gloor's bill will allow for a separate independent appeals process. That's a great thing. But here's the problem, if I can, and what we'll talk about on Select File some more, because it's an issue I brought up in a bill last year in the Insurance Committee and it's this: the standard of review. And you think what's the standard of review about? This sounds like I'm getting way into the weeds. This is a big deal. [LB147]

SENATOR KRIST: Time. [LB147]

SENATOR LATHROP: Did you say time? [LB147]

SENATOR KRIST: Yes, sir. Time. The Chair recognizes Senator Price. [LB147]

SENATOR PRICE: Thank you, Mr. President, members of the body. We have a lengthy and weighty bill before us that has a tremendous impact on everything we do in the state. And I would start that and back that up with some questions to Senator Gloor if he would yield. [LB147]

SENATOR KRIST: Senator Gloor, will you yield to his question? [LB147]

SENATOR GLOOR: Absolutely. [LB147]

SENATOR PRICE: Senator Gloor, in reading this, and perhaps I'll be able to talk to Senator Lathrop in a minute to talk more, but Section 14 talks about shielding these agencies and these agents that work for the state when they do reviews and collecting data, and that shield seemed to be absolutely impervious. I'm not an attorney, didn't ever play one, but it does seem to really protect the reviewing organizations. Is that your understanding? [LB147]

SENATOR GLOOR: Yes. I would say there is a degree of shielding there. Understand that we also have regulations that fall under healthcare...Health Insurance Portability and Privacy (sic) Act, HIPAA. [LB147]

SENATOR PRICE: HIPAA, yeah, yeah. [LB147]

SENATOR GLOOR: Those provide I'd say the largest amount of shielding for individuals who are involved in looking at medical records for purposes of patient care or payment determination. But I'd say in terms of the free flow of information, yes, this bill also speaks to the ability to share some of that information. [LB147]

SENATOR PRICE: Thank you. And then that was going to be a great segue because I was wondering about this, when I look in through Section 15, to how much HIPAA

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applies to the outside organizations maintaining medical records. So, I mean, the bill seems to take a lot of time to directly call certain things out, but I did not see the direct calling out of the applicability of HIPAA to these organizations. I mean, if someone wants to do a request of information to a private organization, that all this medical data is going to be covered? [LB147]

SENATOR GLOOR: Yeah. I would say, Senator Price, that at least in the world of health information as I know it, HIPAA is king of the hill. But you're also going to build into statutes the opportunity to spell out a little more explicitly the opportunities to share information back and forth. Under HIPAA, you can do jail time. [LB147]

SENATOR PRICE: Right. [LB147]

SENATOR GLOOR: It's that significant a law, so. [LB147]

SENATOR PRICE: I'm fairly familiar with HIPAA. My wife works in that arena, so I've been very familiar with it. Thank you. Well, and I appreciate your time, Senator Gloor. I would also let everybody know, make sure we understand, there are numerous places throughout this bill where it talks to--and I'll just use line 25, page 59 as an example--but it says basically that the director can request any information they want, whatever they feel. And I'm wondering why does it have to be quite so broad that...now, think about this. We see an intrusion of government into everything of our lives now more and more, and now a director can just say I want to know everything about this person regardless of applicability. I would hope that somewhere, and we can talk about this in between now and Select, but I would hope that there is a place in there that says that whatever information that a director would collect, and that director would maintain in a file for up to three years, would only be information that is directly pertinent to the medical condition under review, because it seems pretty broad that someone could say I want to get anything that you do and collect it and maintain it. And that's very troublesome. So with that, Mr. President, I would yield the remainder of my time to Senator Lathrop if he would like to use it. [LB147]

SENATOR KRIST: Senator Lathrop, you're yielded one minute. [LB147]

SENATOR LATHROP: The point I'm going to make, and I have my light on and I'll try to set it out for you, is I want to talk about how a policyholder resolves a dispute with an insurance company when the plan is covered by ERISA, or the Employee Retirement Income Security Act. As I indicated, you are not permitted to file a lawsuit against your insurance company. You must go through an appeals process within the insurance company so that the appeals are made to the person who has to write the check if they make a favorable decision. That's a problem. And it's addressed in Senator Gloor's bill. I appreciate this independent process. I want to talk about the standard of review in that process so that you understand where I'm going to be coming from on Select File.

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Thank you. [LB147]

SENATOR KRIST: Thank you, Senator Lathrop and Senator Price. The Chair recognizes Senator Nordquist. [LB147]

SENATOR NORDQUIST: Thank you, Mr. President and members. Just to address one of Senator Lathrop's earlier questions. It's my understanding that plans that were grandfathered prior to the passage of the law in March 2010 do not have to have this external review process, the ERISA plans that were grandfathered. Those new plans after March 23, 2010, do have to have an external review process. And I just want to take a moment to take a little bit of a step back here and talk about the benefits of what this ultimately is, one the many consumer protections under the Affordable Care Act. This is very much a common-sense consumer protection that we are now giving consumers all across the country to be able to level the playing field in their efforts of trying to find...trying to have their interests represented when it comes to insurance. The law empowers states also, and that's what we're doing here, it empowers us to be in the driver's seat when it comes to making these protections work. And just a couple of them that I want to highlight: first, the right to information, why a claim or coverage has been denied. Health plans and insurance companies have to tell you why they've decided to deny a claim or chosen to end your coverage and how you can appeal that decision. You have the right to appeal to the insurance company, that would be the internal review. If you've had a claim denied or had your coverage rescinded, you have the right to an internal process. And if your case is urgent, if it adversely impacts your health, they have to speed it along. And then obviously the third piece, the big piece here that we're talking about is the right to an independent review. We didn't have that in Nebraska before this law came forward. Now every consumer in our state is protected by an independent review to make sure that when there is a dispute the consumer has someone on their side to make sure that they're getting a fair shake. Too often we get caught up in the politics of this act and we don't understand what are the benefits to consumers. This is a big benefit to consumers going forward, the independent review, the ability for them to get a fair shake when it comes to insurance. Thank you, Mr. President. [LB147]

SENATOR KRIST: Thank you, Senator Nordquist. The Chair recognizes Senator Lathrop. [LB147]

SENATOR LATHROP: All right, back in the weeds. Thank you, Mr. President. Colleagues, here's the issue that I have and what I intend to bring up on Select File because I don't expect...this might be a little wonky, and so I want to explain my concern and then we'll get to it on Select File when this comes back. Under ERISA, if you have...let's say that you make an application to your health insurance plan, and it comes to you through work so it's covered by ERISA, and you say...the plan says, we're not covering that, we think it's experimental. Your right from there is to appeal back to your

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health insurance plan, same company, and that company says, well, we looked at the...you know, the articles you sent, your doctor's letter, and we talked to your doctor on the phone. The answer is still no. Then you get one more appeal. It's called an administrative appeal. And they, same company, same company gets to make this same decision. And once they've made the decision, if their plan says we reserve the right to interpret the terms of the plan and make the ultimate decision, your only remedy is to go to federal court where the judge gives deferential treatment to the decision made by the very company that has to pay if they lose. What's the difference? There's two standards of review on these decisions in front of the federal court. One is de novo, which means the court is going to look at it and make a decision on their own: Do I think this is experimental or do I not think it's experimental given everything in the record that I've read, the doctor's opinions and so forth? The other is called a deferential standard of review or, basically, the court has to conclude that the health insurance company was arbitrary and capricious. And that is a game changer. Almost nobody wins that. So the question is, we can have another standard of review, which is terrific. This bill does something that is, as Senator Nordquist says, a consumer protection. But if that independent reviewing agency gives deference to the insurance company, it's probably not that strong, might even be worthless, if all they do is rubber stamp the decisions or they have to conclude that the insurance company's process was arbitrary and capricious. So what I'll be looking for when we get together on this bill on Select File is two things. What's the standard of review going to be for this independent agency? What do we do with their decision? If it is de novo, they make their own decisions, right? They conclude that it should be paid for, it's not experimental. Then does it happen or do we have to go to court to enforce that independent decision? The other thing that I want to look at is why we're limiting it to health insurance plans. I know the Affordable Care Act requires this, but you know what? People who make claims for disability benefits run into the same problem. The insurance company won't pay, they get two appeals through the insurance company, they go to federal court and the judge says, well, I wouldn't have made this decision but I can't say it's completely unsupported by a scintilla of evidence or arbitrary and capricious. Those are the two issues that I'll be looking for answers on when LB147 comes to the floor for Select File. I appreciate the consumer protections that are here, the comments of Senator Gloor and Nordquist in that respect, and we'll talk some more on Select File. Thank you. [LB147]

SENATOR KRIST: Thank you, Senator Lathrop. (Visitors introduced.) Back to debate on LB147. Senator Chambers, you're recognized. [LB147]

SENATOR CHAMBERS: Mr. President, members of the Legislature, friends all, this is one of those examples, a type of bill where some of our members have far more in the way of knowledge and other's experience attach that knowledge which can give us guidance and direction and will show the value of having as diverse a body which is representative of the people as possible. Senator Lathrop raised the kind of issues that are of great concern to me because a right which does not achieve justice is not a right.

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It is a mockery. It is a hoax. It is a sham. If you're never in a position where you have to invoke that right, it doesn't make much difference to you and you are willing to let it go by the boards. But then if it happens to you, a family member, or a friend, then suddenly there is this awakened awareness. We should, as representatives, be able, as Bill Clinton said, to feel others' pain without necessarily feeling it ourselves. I'm going to listen very carefully to the points that will be made and the questions asked by Senator Lathrop. I will listen to the input of Senator Nordquist. And even though they both, if you combined their ages, would not be as old as I am, it is possible to teach an old dog new tricks. They say you can't teach an old dog a new trick. It depends on who's doing the teaching, it depends on what the trick is, and it depends on whether or not the old dog knows it or not. Some old dogs are diplomatic. So that you understand how diplomacy works, if a diplomat says yes, it means maybe. If a diplomat says maybe, it means no. If a diplomat says no, that is not a diplomat. I want to ask a question of Senator Gloor. Senator Gloor. Are you on the floor, Senator Gloor? I would like to engage you more... [LB147]

SENATOR KRIST: Senator Gloor, will you yield to a question? [LB147]

SENATOR GLOOR: I would yield. I'm here. [LB147]

SENATOR CHAMBERS: Oh. Thank you. I'm accustomed to seeing you in the chair in the front. You are repealing outright, in Section 19, an existing statute. Why are you doing that? I am concerned whenever all that's in a bill is the language such-and-such a section is outright repealed. Why are you repealing this section? [LB147]

SENATOR GLOOR: Let me turn to Section 19, sir. Do you know what that section refers to? [LB147]

SENATOR CHAMBERS: Well, in your committee statement, it tells us. I will read it. "Section 19 would outright repeal Section 44-7309, which provides for second-level grievance review under the Health Carrier Grievance Procedure Act. Under the federal..." small printing, "...under the federal Patient Protection and Affordable Care Act, states are only allowed one level of internal grievance review, and so this second level is preempted under federal law." [LB147]

SENATOR GLOOR: Thank you for that question, Senator Chambers. We currently have within statute that referenced in Section 19 a grievance procedure for people who have concerns about their plan not providing an appropriate level of coverage or length of stay. [LB147]

SENATOR CHAMBERS: Excuse me, not to interrupt. That part is clear. But I want to know why you're repealing that section nevertheless. [LB147]

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SENATOR KRIST: One minute. [LB147]

SENATOR GLOOR: The new statutes that we're adopting would provide for one level of grievance. In fact... [LB147]

SENATOR CHAMBERS: Why? Why, when the statute says two, are you providing only for one and repealing the statute that allows for two? [LB147]

SENATOR GLOOR: Because the gist of this bill is that we now would have a second level of review that would be entirely outside the insurer. The insurer would have the first review, which would be a grievance. The second review now goes to these external review organizations, not the insurance company itself. [LB147]

SENATOR CHAMBERS: I have my light on again. My time is up. Thank you, Mr. Chair. [LB147]

SENATOR KRIST: You are next in the queue, Senator Chambers. [LB147]

SENATOR CHAMBERS: Thank you. Mr. Chair, what does queue mean? What is queue? [LB147]

SENATOR KRIST: Next up. [LB147]

SENATOR CHAMBERS: Then why don't you say so? I'm old. I don't know anything about technology. I speak only old line English. So if I'm next up, just tell me. Senator Gloor, here's what I think is the reason for repealing this statute. The federal government has put in place a provision that conflicts with the Nebraska statute. And when the federal government and a state will enact legislation on the same subject matter, if the federal government makes it clear that its will is to prevail, it preempts or wipes out the state statute. So is this particular state statute being wiped out because, as section...as the committee statement says, this level provided by the state statute has been replaced by something in the federal law and the federal law exempts the state statute? So in other words, the federal law is saying you have to do it this way. So is that why it's being repealed? [LB147]

SENATOR GLOOR: Senator Chambers, you have in your way boiled it down to its essence, yes. [LB147]

SENATOR CHAMBERS: Now what difference does it make to us in Nebraska whether the federal government or even the federal constitution says something if we think it ought to be the other way? [LB147]

SENATOR GLOOR: Well, in this case I'd answer that two ways. One is that if we do not

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make these changes, we defer to the federal government anyway. Point number two is the main reason that I think this is good legislation: It provides us an opportunity to not only provide consumer protection but maintain a level of state control. [LB147]

SENATOR CHAMBERS: Well, now as a general proposition, is there such a thing as the supreme law of the land which is supreme to anything a state may do? Is there a supreme law of the United States? [LB147]

SENATOR GLOOR: Senator Chambers, my answer to that would be yes. [LB147]

SENATOR CHAMBERS: Thank you. That's all I'll ask. And that supreme law comprises the U.S. Constitution, federal statutes, and treaties ratified by the United States. Senator Gloor is correct. That is the supreme law and it adds: anything by any state or its constitution to the contrary notwithstanding. In other words, if a state is simpleminded enough to pass something contradictory to the supreme law of the land, it's swept aside by operation of the U.S. Constitution. It's null and void and stamps that state as being ignorant, silly, forgetful of what those people learned in grade school or at least high school. But nevertheless, there are idiotic, crazy pieces of legislation enacted in other pinhead states. And there are people in Nebraska and the Legislature who adopt the monkey-see, monkey-do philosophy and they bring that trash here. And whenever anybody brings a bill, and I'm in this Legislature, and it says that if the federal government enacts this law, it does not apply in Nebraska, I'm going to have a field day on such an individual. I will tell you why. Such an individual makes you understand why the philosopher said, even the gods labor in vain against stupidity. I don't put the limitations of the gods on myself. When the stupidity is presented to me... [LB147]

SENATOR KRIST: One minute. [LB147]

SENATOR CHAMBERS: ...I will labor against it, and I will labor and labor and labor some more. So when you all bring that stuff here, you're not going to get away with it, you're not going to be taken seriously because some of that stuff is outside the realm of intelligent discussion and dispute. Nevertheless if it comes and that's what we're here to deal with, I will dispute. Thank you, Mr. President. [LB147]

SENATOR KRIST: Thank you, Senator Chambers. Seeing no other lights on in the queue, Senator Gloor, you're recognized to close. [LB147]

SENATOR GLOOR: Thank you, Mr. President. And thank you, Senator Lathrop and Nordquist, Price and Chambers, for you discussion on this important piece of legislation that I see, as has been stated several times, as consumer protection. Questions about ERISA, questions about disability plans, all can be addressed I think between now and Select File. What we don't want to lose sight of is that for those Nebraskans covered under your traditional insurance plans, this is an important consumer protection piece.

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Instead of all reviews being done under the roof of the insurer, we now...they now have one chance at that. The second opportunity then comes with private, separately contracted with review organizations. If this passes, under the control of the director of the Department of Insurance, those review companies have to be credentialed, certified, accredited, just like hospitals do. And as a result of that I believe we'll find far more impartial decisions being made that will benefit consumers of healthcare services. Some questions to answer between now and Select File, but this still stands as an important bill for those Nebraskans now and in the future covered under health insurance. And I'd ask for your support moving this forward. Thank you. [LB147]

SENATOR KRIST: Thank you, Senator Gloor. The question is the advancement of LB147 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB147]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB147. [LB147]

SENATOR KRIST: Thank you. The bill advances. Next item on the agenda was scheduled to be LB209. We are going to pass over LB209 and go immediately to Senator Gloor's LB213. Is that correct, Mr. Clerk? [LB147 LB213]

CLERK: Yes, sir, it is. Mr. President, LB213 is a bill by Senator Gloor. (Read title.) The bill was introduced on January 15 of this year, referred to the Banking, Commerce and Insurance Committee, advanced to General File. I do have an amendment to the bill, Mr. President. [LB213]

SENATOR KRIST: Thank you, Mr. Clerk. Senator Gloor, you're recognized to open on LB213. [LB213]

SENATOR GLOOR: Thank you, Mr. President. Good morning again, members. LB213 was introduced at the request of the director of Banking and Finance. The bill proposes updates to the statutes relating to depository financial institutions under the jurisdiction of the Department of Banking. In brief, this is the annual update to the laws related to depository financial institutions. There's a bill like this every year. This is our annual year...or our annual bill from the director of the Department of Banking and Finance. The first set of these updates results, not surprisingly, once again, from the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted by Congress in July 2010. The Dodd-Frank Act created the Consumer Financial Protection Bureau, CFPB, as an independent federal regulator with responsibility for supervision and enforcement of federal laws over providers of consumer financial products and services with the attention of preventing unfair, deceptive, and abusive financial practices. These providers include, among others, payday lenders, mortgage lenders, credit card issuers, and collection agencies. While the CFPB has no chartering authority, it has authority to adopt and enforce standards for providers of consumer financial services and the larger

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banks, as well as the authority to conduct examinations of such entities. The Department of Banking currently has the authority to share confidential information, including examination reports with other financial institutional regulators. That includes the Federal Deposit Insurance Corporation, the Federal Reserve, and their counterparts in other states. LB213 would update laws to include the Consumer Financial Protection Bureau as an additional regulator with which the department may share this type of information. On a related matter, the bill would amend an existing requirement that in situations where the director of Banking and Finance has a financial interest in state-chartered financial institutions, the Governor will have charge of and receive reports of examination for that institution. This bill would provide that any examination report or information received for such an institution from the CFPB would also be sent to the Governor. The Nebraska Banking Act currently prohibits employees of the Department of Banking and Finance from borrowing at any state-chartered financial institutions, except for the Nebraska State Employees Credit Union. This bill would provide that in the event the State Employees Credit Union would ever merge with another state-chartered credit union, department employees would be able to continue borrowing at that successor credit union. It's important to understand that at our hearing on this bill, the director pointed out that the department was not aware of any plans by the State Employees Credit Union to merge, but said he did not want to take or give the impression with this bill that there were any such plans. This amendment is proposed at this time because of the other amendments in the bill relating to the CFPB. Next, the bill would amend provisions relating to bank investments. This bill would enact a new section of the Nebraska Banking Act to provide authority at the state level for state-chartered banks to invest in limited liability companies, LLCs. An LLC could be formed by one bank, a group of banks, or a bank and a third party, with the activities of the LLC limited to general banking activities or activities incidental to the business of banking. The LLC would be subject to examination by the Department of Banking and Finance. Other parameters of an LLC investment would be set by rule or order of the department. State-chartered banks currently have the ability to make these investments through use of the state-chartered bank wild-card statute because national banks are authorized to make such investments under federal statute. Due to the increased interest in formation of LLCs by banks particularly for the holding, management, and disposition of real estate taken in satisfaction of bad debts, the Department of Banking proposes with this bill that the department be authorized to provide guidance to state-chartered banks. This bill would amend the Nebraska Trust Company Act by updating the prerequisites for membership on the board of directors to a trust company. The bill would remove the requirement that a member of the board own one share of stock in the trust company, and would remove the requirement that members of a board of directors must be selected from shareholders of that trust company. These provisions are modeled after the Nebraska Banking Act where a similar requirement for members of bank boards of directors was repealed by the Legislature in 2005. Next, the bill would provide for the annual reenactment of the depository financial institution's wild-card statute to provide equal rights, powers, and privileges for state-chartered banks, credit

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unions, and savings and loans with their respective federal counterparts. Due to state constitutional restrictions on delegation of legislative authority, these statutes need to be amended annually to provide a current reference date. The remaining provisions of the bill would update references to federal laws related to electronic funds transfers, financial reports, certain bankruptcy notices, and would repeal an obsolete reference to the date of registration of financial institution mortgage loan originators. This is the year's update in the statutes relating to the depository financial institutions under the jurisdiction of the Nebraska Department of Banking and Finance. Thank you, Mr. President. [LB213]

SENATOR KRIST: Thank you, Senator Gloor. Mr. Clerk. [LB213]

CLERK: Mr. President, I do have an amendment to the bill. Senator Schumacher would move to amend with FA2. (Legislative Journal page 353.) [LB213]

SENATOR KRIST: Thank you. Senator Schumacher, you're recognized to open on your amendment. [LB213]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This particular amendment focuses in on just a short phrase, and I bring this amendment because I think we need to understand the laws that we pass and the consequences that there might be. The phrase appears on page 5 and the paragraph in which it's in says: A limited liability company which has a bank as a member shall engage only in those activities that are part of the business of banking or incidental to such business except for the receipt of deposits. And above that it says that a bank can become a member of a limited liability company. So, what this is saying is that a bank can become part of a company that has limited liability and that is governed by an agreement to create a limited liability company, and that this limited liability company can go into some kind of business incidental to banking. The question was, what is incidental to banking? Because we're permitting a bank to set up a company, and maybe a company within a company and a company within that company, all of which have all kinds of relationships with other companies. And we're permitting them to do it for anything that is incidental to banking. A fair question is, what is it? The response was, well, it's something like a bank gets stuck with a building that it has a mortgage on and it's foreclosing and it has to operate it because the real estate market is really terrible at that point, so let them set up a little company off to the side and run the rental business in that building until the market turns around. Fair enough. Sounds fine. Let's just say that in the law that they can do this. In addition to banking, they can manage property off to the side that they're stuck with. Well, that isn't quite good enough. We want to do everything incidental to banking. And we really need to do this because, well, the federal government in the federal bank charters says incidental to banking, and gosh, we've got to be competitive. Well, in the last five years we've saw a banking and insurance crisis, the product of lax regulation. It's not to say our state Department of

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Banking is lax, but if you put this on the books, it may well survive the people there. The federal agency said, ah, we'll just get along with people. They overlooked very obvious signs of weakness. Nobody wanted to rain on anyone's parade. Well, these off-books obligations held off to the side in other companies owned and controlled by the banks, expose the underside of our financial system to great vulnerability. I don't think it's our role to delegate, well, what a bank can do to the Department of Banking. If we say in a bill what's incidental to banking they can do, and they can hide this in a levels and levels and levels of LLCs, I think we should specify exactly what is meant. As such, by striking "or incidental to banking," it limits them to using LLCs in the business of banking, not in the business of whatever else some regulator at some point might believe is incidental to banking. And when I ask what if we disagree with something being incidental to banking, we disagree with the Banking Department, I was told basically, well, then you can come to our hearings and you can make your argument. I don't think that's the way the Christmas tree is arranged. I think we're the angel at the top of the Christmas tree. And if we're going to permit a bank to set up a side corporation, or LLC that can have LLCs within it and other arrangements with other LLCs, and all those may or may not be transparent, and the deals between them may not be transparent, then we should be the ones calling the shots. And so I've introduced this, this morning for some discussion on this issue to see what we feel is our role in the regulation of banking, whether or not anyone else sees any dangers in such tiered relationships and nested LLCs, and see if we can define this a little bit better. And that's why I introduced FA2. Thank you, Mr. President. [LB213]

SENATOR KRIST: Thank you, Senator Schumacher. (Visitors introduced.) Carrying on discussion about FA2, Senator Gloor, you are recognized. [LB213]

SENATOR GLOOR: Thank you, Mr. President. Thank you, members. If you'll notice, the bill came out of committee with one no vote. That was from Senator Schumacher, who is pretty persistent in asking this question, and good for him. It provides for a level of dialogue that is appropriate and important, if for no other reason that, as Senator Chambers points out pretty regularly, it educates us and makes us better lawmakers. Let's understand that the vast majority of the bill, and there is a lot to this bill because it's the annual update, is important and important to move forward to. We look at this issue of incidental to the business of banking. I have a tendency to fall back on those things that I know and am more comfortable with in my previous career. We also don't specifically spell out what a hospital does, what's incidental to the business of a hospital. To the extent that that is determined, we have entities and organizations that provide credentialing, accreditation, licensure at the state level who we have imbued with the powers of making those decisions. The same is true with banking. Whether it's federal charters, state charters, the Department of Banking, a comptroller, there are individuals who define what a bank is, and what is incidental to the business of banking, to protect us and to make sure it doesn't fly too far afield. What Senator Schumacher would like us to do may not be at all inappropriate but difficult to do, and that is to say,

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and this is how we define what's incidental to the business of banking, just as it would be difficult in my previous life to say, and this specifically is what a hospital does. It becomes very technical. It becomes very difficult. And we have entities that help us and guide us through this. We are, with this bill, continuing to provide those entities with the statutes necessary to do their job. Were we to strike the section, it still remains in federal statutes. It's still in place. What we may have done is remove it from state-chartered institutions, which isn't good for state-chartered institutions, and we have a long and proud history, I'm told, in this state with a philosophy that we want the state charter to be up-to-date and strong on behalf of those state-chartered banks. So we'll see whether there's any more discussion about this, whether we can continue this discussion between now and Select File and address some of those issues that Senator Schumacher rightly brings up from an educational standpoint and the standpoint of generating some discussion. Thank you, Mr. President. [LB213]

SENATOR KRIST: Thank you, Senator Gloor. The Chair recognizes Senator Nelson. [LB213]

SENATOR NELSON: Thank you, Mr. President and members of the Legislature body. I would like to ask Senator Gloor a question or two, if he will yield. [LB213]

SENATOR KRIST: Senator Gloor, will you yield to a question? [LB213]

SENATOR GLOOR: Yes, I will. [LB213]

SENATOR NELSON: Thank you, Senator Gloor. Just taking a look at this new Section 4, do you recall what rationale was offered at the hearing as to why banks wanted the ability to become LLCs? [LB213]

SENATOR GLOOR: In my opening comments, and I'd go back and repeat those for you, I'd say the crux, maybe I won't repeat them, but the crux of them have to do with holding, management, and disposition of real estate. When you take a look at those challenges that we've had with the real estate industry and the real estate markets and loans, a number of banks have felt the responsibility to set up their own property management companies, as an example. This would be an example, at least as explained to me, of what we might be talking about under one of the LLCs. [LB213]

SENATOR NELSON: Are charter banks in Nebraska limited to certain types of protective entities such as corporations or subchapter S or anything like that? I'm just not familiar with what the requirements are now. It looks to me like this is protection from liability, perhaps, in a certain area. Would that be correct? [LB213]

SENATOR GLOOR: I don't believe it's as complicated as that. I think it's just to be able to undertake these other business operations or business models in an LLC manner.

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You, better than I, I think, would know the purpose of formation of LLCs, but what we're talking about here does nothing more than point out that they can undertake these different business enterprises as an LLC. [LB213]

SENATOR NELSON: Just going along with what some of the concerns that Senator Schumacher has then is, is there any good reason why we could not limit the...what's incidental to such business as just certain areas where there is a matter of concern as far as the banks are concerned, real estate transactions, things of that sort, and so that we know exactly what we're doing here and what their liability, what areas can be extended to outside of banking? [LB213]

SENATOR GLOOR: There may or may not be that opportunity. It would take us some time to work with the department to answer that question, something that could be looked at between General and Select File. I do know that if we do not make this decision, it will still exist as relates to federally chartered banks. So we'll have federally chartered banks in a position to do something that state chartered banks do not, and therein lies part of a problem for those state chartered banks. [LB213]

SENATOR NELSON: Thank you. That's helpful and I will wait for any further discussion that we might have on this. Thank you, Senator Gloor. Thank you, Mr. President. [LB213]

SENATOR KRIST: Thank you, Senator Nelson and Senator Gloor. The Chair recognizes Senator Carlson. [LB213]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to direct a question or two to Senator Schumacher, if he would yield. [LB213]

SENATOR KRIST: Senator Schumacher, will you yield for some questions? [LB213]

SENATOR SCHUMACHER: Yes, I will. [LB213]

SENATOR CARLSON: Senator Schumacher, if your amendment is adopted, is it even necessary to have Section 4, point (2) in the bill? What would point (2) do if your amendment is adopted? [LB213]

SENATOR SCHUMACHER: Point (2) would then say: A limited liability company which has a bank as a member shall engage only in those activities which are part of the business of banking. And the prior paragraph says that a bank may become a member of a limited liability company that is consistent with the rules. So you could still run, under the amendment, instead of striking all of (2), you could still run something that is clearly the business of banking, the foreclosure company, for example, because that is clearly the business of banking. You've got to foreclose on a mortgage and you've got to

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maintain the property and make it productive until you can get to a mortgage sale. It's when we get off into never-never land and start asking questions whether or not the business of banking is such things as operating travel agencies in the context of these limited liability companies, that I think there is a difference that would be between striking the entire section and just these three or four lines...three or four words. [LB213]

SENATOR CARLSON: Well, if your amendment is adopted, then that statement ends with, "except for the receipt of deposits." Now, and I'm not trying to be funny, but don't banks accept or give out receipts of deposits? [LB213]

SENATOR SCHUMACHER: Yes, they do, but the limited liability company. The bank would still be there and the bank is in its existing format and it still can take deposits. But the limited liability, created to manage the bum property they got stuck with, could not take deposits. [LB213]

SENATOR CARLSON: Okay. And certainly the question then is, "incidental to banking" and how important that is or unimportant it is. And I'll continue to listen to what people have to say. Thank you, Senator Schumacher. [LB213]

SENATOR SCHUMACHER: Thank you. [LB213]

SENATOR KRIST: Thank you, Senator Carlson and Senator Schumacher. Seeing no other lights on in the queue, Senator Schumacher, you're recognized to close on your amendment. [LB213]

SENATOR SCHUMACHER: Thank you, Mr. President. I think this is a serious issue. I wouldn't have suggested this amendment if I did not think it was a serious issue. It was not explained in the committee hearings to my satisfaction. I've asked for information from the Banking Department and from the banks. Finally this morning, I did get a listing of 14 items that they consider are the business of banking, some of which seem okay, some of which seem highly questionable, like operating a full-service travel agency, which indicates the expansion and expansive nature of this open-ended language. I think it's appropriate. I don't want to...this is a corrective bill. I don't want to hold it up in the process here, but I think it's appropriate that we go over the suggestions of what should be exempted from this "incidental" language. And so at this time what I think I'm...would be appropriate is for me to withdraw FA2 with the idea we could go over and try to work out some of the details and flesh out that language between now and Select File. And if that's not satisfactory, then I intend on bringing it back on Select File. I would ask that FA2 be withdrawn at this time. [LB213]

SENATOR KRIST: The amendment is withdrawn. Seeing no other lights on in the queue, Senator Gloor, you're recognized to close on LB213. [LB213]

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SENATOR GLOOR: Thank you, Mr. President. Thank you, members. You know, it's no fun being Chair of a committee if nobody asks you questions about bills that you bring out of your committee, so I want to thank Senator Schumacher for making me break a sweat today for a change with some of the bills I've had here. He has some legitimate issues and we will address those between now and Select File. Plenty of opportunity for discussion. But again, I would remind the body that this is an important bill for a number of reasons. Components of the Dodd-Frank Wall Street Reform Act, which is there to help and protect consumers, are integral parts of this bill and, therefore, it needs to move forward. I'd ask for your green light on this bill. Thank you, Mr. President. [LB213]

SENATOR KRIST: Thank you, Senator Gloor. The question is the advancement of LB213 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB213]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB213. [LB213]

SENATOR KRIST: The bill advances. Mr. Speaker for an announcement. [LB213]

SPEAKER ADAMS: Thank you, Mr. President. Members, in looking forward on the agenda and seeing where we're at today, here's what I think we ought to do. We will convene at 9:00 a.m. tomorrow. We have a little bit of Select File that has been reported down that we can go to work on. Obviously, we have some more things on General File that we can keep working on, but we really don't have a real heavy backlog of General File right now. So here's what I would propose. We will begin at 9:00, we will work on the Select File that we have and some of the General File, and then we will take a bulk of the morning for the five-day and the three-day committees to do some Exec time if they need that. Just try to build in a little flexibility tomorrow morning, given where we're at. Thank you, Mr. President. Oh, by the way, one other thing then. I'm going to try to do the same thing next Wednesday for the two-day committees. We'll try to work next Wednesday morning of next week so that the two-day committees maybe have a little time in the morning for Exec Session. Thank you, Mr. President.

SENATOR KRIST: Thank you, Speaker Adams. Mr. Clerk.

CLERK: Mr. President, your Committee on Revenue, chaired by Senator Hadley, reports LB24, LB28, LB29 to General File, and LB36 to General File with amendments, those signed by Senator Hadley. Hearing notice cancellation from the Judiciary Committee, and a hearing schedule from Transportation and Urban Affairs, all signed by the respective Chairs. Senator Karpisek would like to withdraw LB360. That will be laid over at this time, Mr. President. Senator Karpisek would like to add his name to LB5 as cointroducer and Senator Cook to LB484. [LB24 LB28 LB29 LB36 LB360 LB5 LB484]

And I do have a priority motion. Senator McCoy would move to adjourn the body until

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Tuesday, February 5, at 9:00 a.m.

SENATOR KRIST: You've heard the motion. All those in favor say aye. Opposed. We are adjourned.