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Floor Debate
March 01, 2018

[LB78 LB117 LB275 LB285 LB310 LB345 LB472 LB480 LB486 LB596 LB618 LB710
LB744 LB747 LB757 LB758 LB1040 LR6 LR333]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-sixth day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is Pastor Allison Siburg from the Salem Lutheran Church in Fontanelle, Nebraska; Senator Brasch's district. Please rise.

PASTOR SIBURG: (Prayer offered.)

PRESIDENT FOLEY: Thank you very much, Pastor Siburg. I call to order the thirty-six day of the One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Are there corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

PRESIDENT FOLEY: Thank you, sir. Any any messages, reports, or announcements?

ASSISTANT CLERK: Mr. President, only two items: various agency reports have been filed electronically with the Legislature and available through the Web site. In addition to that, a list of registered lobbyists for the current week. That's all I have this morning. (Legislative Journal pages 825-826.)

PRESIDENT FOLEY: Thank you, Mr. Clerk. (Doctor of the day introduced.) Senator Krist, for what purpose do you rise?

SENATOR KRIST: Thank you, Mr. President, good morning, colleagues, and good morning, Nebraska. I draw your attention...

PRESIDENT FOLEY: Senator Krist, for what purpose do you rise?

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SENATOR KRIST: Oh, I'm sorry, point of personal privilege, please.

PRESIDENT FOLEY: Please proceed.

SENATOR KRIST: Thank you. I draw your attention to the last item on your agenda today, LR333. We're recognizing March as the Problem Gambling Awareness Month in Nebraska. The Governor will also sign a proclamation to that effect. Gambling is with us. It is a reality. But there are many people who suffer addictions to gambling, and we have a wonderful group of people who function in this state as counselors to fight that addiction and to keep people from falling further into a hole based upon the gambling addiction that they have. I would ask you all to give me a round of applause, but I know that's inappropriate, but I would hope that you would reach out to problem gambling organization this month and thank them for their efforts. So thank you for the point of privilege, Mr. President. [LR333]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Kolterman, for what purpose do you rise?

SENATOR KOLTERMAN: Point of personal privilege.

PRESIDENT FOLEY: Please proceed.

SENATOR KOLTERMAN: Good morning, colleagues. Thank you for allowing me to speak a few minutes this morning. First thing on the agenda today is a bill, and I'm not going to talk about the bill. I believe it's important. But I do want to talk to all of you individually as friends and colleagues. I thought about what I'd say to all of you. I've never said this publicly, but over the last couple of years you've been there for me. You supported me through some really challenging times with my wife and I appreciate that. I consider you all friends, even though we don't always agree on certain issues. The bill that we're going to be looking at really deals with terminal cancer patients in a lot of regards. I voted it out of committee last year and I'm passionate about that bill. I know there will be some opposition to the bill. I understand that. It won't change my position. But I do want you to know in all sincerity, I wouldn't be able to function at the level that I'm functioning at without all of your support the past couple of years, and to all of you for that I'm ever grateful. Thank you.

PRESIDENT FOLEY: Thank you, Senator Kolterman. Speaker Scheer.

SPEAKER SCHEER: Thank you, Mr. Lieutenant Governor. It is the last day of the week again, colleagues, and so I thought I would give you an update of where we are going to be going. The

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group of bills that I showed you last Friday, if you look on the agenda today, the last portion will be showing....or I guess the last portion will be showing up probably on Monday's agenda. So we'll have gone through that...we haven't gone through it all, but it's now on the agenda. Next week, we will have some Select Files that...LB44 priority will be coming back. LB874 is on Select and LB439 is on Select and that will be coming back probably on Tuesday. We have a General File that is coming back after showing numbers, that will be LB776, and hopefully we'll be doing that on Tuesday as well. New parts that will be coming up will be on committee priorities, will be LB1090, LB808 and LB953. General File, Senator priority bills will be LB993, LB998, LB1119 and LB589. And on Speaker priorities on General File will be LB741, LB923, LB760 and LB803. Depending upon how quickly we're moving, we may have to find some others to put on for next week, but looking at the agenda today and then tonight as Tuesday's will come out, this will give you a pretty good idea of what we'll be looking at for next week. As usual, if there is any questions, please come back and let me know what those might be, and I think our four-day weekend is coming at an appropriate time. I think we all need a little bit of a break and some time and we'll come back refreshed and be able to put some good quality time in next week. So enjoy your break, and for those of you that haven't asked, which I think everyone has asked, it would be my intent to be done somewhere around noon to 12:30, depending upon if there is an obvious break in a bill where we may be able to get done. We'll try to run and get that finished. If not, then we'll just try to break somewhere around noon. So again, enjoy your weekend.

PRESIDENT FOLEY: Thank you, Mr. Speaker. We'll proceed right away to General File, 2018 Speaker priority bills. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB117, introduced by Senator Hilkemann. (Read title.) Bill was introduced on January 6 of last year. It was referred to the Health and Human Services Committee. That committee placed the bill on General File with committee amendments. (AM46, Legislative Journal page 710, First Session, 2017.) [LB117]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Hilkemann, you're recognized to open on LB117. [LB117]

SENATOR HILKEMANN: Thank you, Mr. Speaker. I'm sorry we can't have props in here because if I could, I'd have a drum roll going on here, because this is the third time that I've had this bill and so I'm hopeful that the third time is the charm. I'd like to begin by first of all thanking Speaker Scheer for making this a Speaker priority. You may remember back to 2016, the same bill was designated by then Speaker Galen Hadley as a priority, and we got to the end of the session and there were about three bills that needed to be introduced. I know Senator Kolterman had one, I think Senator Crawford and myself, and due to lots of people talking a

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long time on the mike, neither one of those bills were introduced that day. So purposely today, I'm going to keep my introduction quite short. LB117 creates the Investigational Drug Use Act, or as it is better known, right-to-try. This bill allows patients with terminal illnesses to access potentially life-saving medications that have not yet been fully approved by the FDA. In order for a patient to gain access to one of these investigational medications under this legislation, first the medication must have passed Phase 1 of the FDA approval process, meaning that it must have been completed basic safety testing and is part of a continuing FDA approval process. Additionally, the patient must have a recommendation from their treating physician and they must give written, informed consent. And furthermore, the patient must have tried all other conventional treatments. This truly is a last resort for those facing the unthinkable. The FDA has a process in place for patients to access these investigational medications through what's called its compassionate use application. However, this process is cumbersome and time consuming, and if you are a child or you have a terminal illness, you do not have time on your side or time to waste. Right-to-try removes the needless bureaucracy so that those facing the unimaginable suffering can have timely access to medication that could potentially alter their fate. This bill also includes important protections under LB117, health insurers are not obligated to pay for this treatment. The patient is responsible for related expenses. Manufacturers and doctors are not liable if the investigational medication does not work. And thirdly, a healthcare provider cannot lose their license or certification for treating a patient with an investigational drug. Additionally, the Department of Health and Human Services suggested a technical amendment to the bill to ensure that Sections 8, line 23 and 25 on page 4 accurately describes Medicaid's relationship with providers. It changes the word "certification" to "enrollment" because Medicaid pays enroll providers and does not certify providers as the original language suggests. This is reflected in AM46, which will be introduced by the HHS Committee upon placing this bill. Thirty-eight states have now adopted similar legislation with bipartisan support. And I believe that it is time for Nebraska to join this growing list of states that allow terminally ill patients access to medications and treatments that may help them save their own lives. We don't know what type of therapies are on the horizon for Alzheimer's, for MS, for ALS, or Lou Gehrig's disease. But we can offer patients the right-to-try potentially groundbreaking medications or therapies to offer them hope, offer them hope when conventional treatments have not. Thank you for consideration of this important legislation. I ask you your green vote on AM46 on LB117. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. As the Clerk indicated, there are amendments from the Health and Human Services Committee. Senator Riepe, you're recognized to open on the committee amendments. [LB117]

SENATOR RIEPE: Thank you, Mr. President and colleagues and Nebraska. AM46 is a simple amendment. AM46 strikes "certification" and inserts the word "enrollment." This is referring to the certification versus enrolling providers in Medicaid. The change in language is at the request

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of the Department of Health and Human Services as Medicaid does not, I repeat "not" certify providers, it enrolls providers. I ask for your support of this committee amendment, AM46. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Mr. Clerk. [LB117]

ASSISTANT CLERK: Mr. President, a priority motion from Senator Chambers, he would move to bracket the bill until April 4. [LB117]

PRESIDENT FOLEY: Senator Chambers, you're recognized to open on your bracket motion. [LB117]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there are people who have genuine concerns about this bill, which I do, but this motion is entirely separate from that. I'm not asking for a point of personal privilege, but I read something in the World-Herald this morning. It was slipped under my door. And I want to respond to it. It had me seething because a member of the Legislature was involved and I think defamed the entire body by making it seem like we're a bunch of clowns and ignoramuses. First National...oh, here's the headline: Nebraska State Treasurer candidates criticize First National Bank for cutting ties with NRA. "First National Bank, already taking flak from some customers for its decision to not renew a credit card contract with the National Rifle Association, has become a target in Nebraska's Republican primary for state treasurer. GOP treasurer candidate Taylor Royal said Wednesday that, if elected, he would re-examine all Treasurer's Office contracts with First National Bank to seek better terms for taxpayers and perhaps a new bank. First National, the nation's largest privately held bank, with \$20 billion in assets, manages the state's college savings plan, including an estimated \$4.81 billion in the Nebraska Educational Savings Trust. 'I want to be sure as state treasurer that we're doing business with organizations that promote Nebraska values,' Royal said. 'If you look at Nebraskans overall and their love and promotion of their constitutional rights, I don't think that First National's decision fits with that.' Royal's opponent in May's GOP primary, State Senator John Murante of Gretna, said Wednesday that First National made a mistake in its decision on the NRA credit card contract. Both said most Nebraskans would side with the high-profile gun-rights advocacy group. 'I vehemently disagree with First National's decision to cut ties with the NRA,' Murante said. The senator, who received support from First National in both of his races for the Legislature--\$500 in 2015 and \$1,500 in 2012--said that he thinks it is appropriate for a new state treasurer to review any contracts the State Treasurer's Office has. First National has felt pressure from many sides of the national gun debate. First, it was the target of an intense social media campaign by gun control advocates in the wake of a school shooting in Parkland, Florida. And since its decision, First National and many other companies that have cut ties with the NRA have been singled out by gun-rights

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advocates who want corporate America to stand by the NRA. The company's Facebook page is littered with comments from angry gun owners. A company representative declined to comment for this story. The Treasurer's Office confirmed Wednesday that it exercised its option to extend First National's college savings plan contract in November for three years, to December 2020. An office spokeswoman said it did so in exchange for lower management fees of about \$600,000 a year for the final three years. State Treasurer Don Stenberg is finishing his final term. Royal, who works in his family's financial services business, says his push to review First National's contracts began because he thinks the state pays too much in fees and administrative costs on its college savings plans." I'm departing. I think he's a barefaced liar when he said that. "Murante, for his part, argues that his experiences as a small-business owner prepare him to review such contracts. Both stressed that companies shouldn't overreact to passions surrounding current events, and that the public and its elected representatives have the right to take their business elsewhere." He got that right. I didn't have a lot of time. This set of limericks does not have my usual polish, but I had to put something together or I would burst. How much time do I have, Mr. President? [LB117]

PRESIDENT FOLEY: 5:30. [LB117]

SENATOR CHAMBERS: How much? [LB117]

PRESIDENT FOLEY: 5:30. [LB117]

SENATOR CHAMBERS: Thank you. I think I can finish it. Parson Pinafore Pickett was praying, when a pair of jackasses braying/ interrupted the prayer he offered the Lord/ both the asses voice dismay, because their master the NRA/ had been dealt with in a matter untoward. Parson Pickett wanted to know, what upset the asses so/ in order to get answers he inquired/ tell me asses why you bray, in such a God forsaken way/ from their mouth spewed foam and they perspired. Parson, something oh so rank was perpetrated by a bank/ from the depths of hell it came uncaged/ what that bank did foul God's air and cause gun owners great despair/ therefore must we bray, for we are outraged/ as sure as God lives in the sky, the both of us shall fathom why/ that bank did wrong and spurned the NRA/ frankly it unhinged us both, and on God's beard we swore an oath/ that for its dastardly deed that bank shall pay/ both of us for office are running, whichever win shall go a gunning/ for that bank and we shall make it pay/ Treasurer is the office we seek, our outrage makes it hard to speak/ we swear we shall avenge the NRA. Parson Pickett shook his head, in disbelief and then he said/ in view of problems plaguing this great land, why would the two of you this day have sworn to avenge the NRA is something I just cannot understand. These two hack politicians are trying to exploit a tragedy that took place in Florida. Neither one of them has said anything about the deaths of these children who were slaughtered then and have been slaughtered in other such shootings. But they had to find time to

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defend the NRA which wants those assault rifles to continue to be made available to those 18 years old. That's what he wants. That's what they want. And these panderers, these insensitive political hacks want to make the most of it. I was implored by some people not to give Murante what he wants. I don't think he wants what I'm saying. He's going to probably win the Treasurer's Office. He's a...let me select the right word. He is endorsed by that numbskull party, the Republican Party, so they will get enough Republicans, as they call themselves, to vote for him. He let people know what he is and he also shows the contempt that he has for the people of Nebraska. And if he's right, then it means I'm wrong in thinking that despite the fact that Nebraskans do a lot of boneheaded things, they are not of a mind to join in the political exploitation of that horrendous tragedy. And if I'm shown to be wrong, then I'll have a lot to say in the two remaining years I have on my sentence in the Legislature. But I had to say this and I don't speak behind my hand. I don't throw a rock and hide my hand. They notoriously, openly, and proudly said what they had to say and I openly, notoriously, and angrily say what I had to say. I have no respect for either of them, either of them. And I am ashamed of this man, Murante, who a few days ago I referred to as my brother. I wouldn't do this, but the brother relationship is not always good. Cain killed Abel. This Cain on the floor of the Legislature slew the good feeling... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR CHAMBERS: ...his brother, myself, was trying, trying to develop for him. He's unworthy of it and he ought to have the manhood enough to stand up and defend himself. But maybe he has the intelligence not to. If he doesn't speak, silence gives consent to everything I said. If he does speak, I certainly shall have more to say. And for a while we're going to be on this matter. Thank you, Mr. President, and I withdraw my motion. [LB117]

PRESIDENT FOLEY: Bracket motion is withdrawn. Thank you, Senator Chambers. Proceeding now to debate on LB117 and the Health and Human Services Committee amendment, Senator Hilgers. [LB117]

SENATOR HILGERS: Thank you, Mr. President; good morning, colleagues. I rise in opposition to LB117, although I understand and support the ultimate goal that Senator Hilkemann has outlined and Senator Kolterman has outlined before and I suspect will do as well this morning. I do think it is important to increase access to people who are terminally ill to experimental drugs and doing it the right way. The reason I am not in support of LB117 is because I do not think that our analysis...or my analysis certainly should end just at whether or not I support the ultimate policy goal, because I think an implied but critical question of our work here as whether or not we have the authority to do what it is that we purport to do. In this case, I think very clearly we do not have the power to enact LB...or we can enact it, but I do not believe it will be

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constitutional under our system. I think the vast majority of the questions before this body do not implicate federal constitutional concerns, whether we are determining the scope of the power of political subdivisions, whether we are looking at our taxing authority, our appropriations, our budget, our agency construction and the like, all of those things fall within the power and scope of state authority. I don't think there is any question about it. But in our federal system there are limits to that particular power. We've seen it on occasion since I've been here in this body. We've seen it in regard to Senator Watermeier's bill on Internet sales tax authority. We saw it...we had a discussion last year on the dormant commerce clause as it related to...an equal protection clause as it related to Senator Larson's bill involving the distributors and the craft brewers. We saw it, in fact, in the Transportation Committee in regard to Senator Morfeld's bill on net neutrality. I think it's implicated...there's constitutional concerns are implicated here. And I want to take a step back, especially for those who are watching at home or at work watching this debate here. I think it's really important to sort of set some context for the work that we're doing here this morning and that is really our federalist constitutional system. Our system creates and recognizes the authority of states and the sovereign authority of states and it also recognizes the authority and sovereign authority of the federal government and, by and large, those authorities don't intersect. But in certain places they do. And where they do, the federal constitution has stated in Article VI, Clause 2 that the federal law is supreme. So where state law is in conflict with a valid federal law, that state law is unconstitutional. That's called...that's under the supremacy clause, it's often referred to as preemption. And so in this case, I believe LB117 would clearly be preempted for the following reasons. The federal government has created that the Federal (Food,) Drug, and Cosmetic Act, a very comprehensive scheme that regulates clinical drugs and clinical trials and the issuance and sale of new drugs, as referenced by Senator Hilkemann. And that law in particular says in Chapter 21 USC 355, it says that no person shall introduce or deliver for introduction into interstate commerce any new drug unless an approval of an application filed pursuant to subsection (b) or (j) of this section is effective. No person shall introduce or deliver for introduction into interstate commerce any drug that hasn't received approval. That is precisely what LB117 would do. In other words, it acknowledges that the drugs that could be used would not have received approval, final approval under the FDCA, but nevertheless, it will allow the use and sale of those drugs. That is in direct conflict, in my view, with the FDCA, direct conflict. So no matter what we think of the policy... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR HILGERS: Thank you, Mr. President. ...no matter what we think of the policy or its goal, I think we always have to ask, do we have the authority to do what we are trying to do? In some cases it's ambiguous. In some cases there is bona fide arguments on either side as to whether or not a particular action is constitutional. I do not believe that this is one of those cases. I do not believe there is an argument by which we could contend this would be constitutional. It is in direct conflict with the federal prohibition. I'm all ears if there is a counterargument, I'm

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always willing to listen. But I don't think there is such an argument in this case and for those reasons I cannot support LB117. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Kuehn. [LB117]

SENATOR KUEHN: Thank you, Mr. President and members of the Legislature. I rise today in opposition to LB117. And we're going to take some time on this bill today, not because I oppose the concept, not because I oppose access for potentially life-saving medications to terminally ill patients, but because I think we need to take a very cautious look at the language of this bill, and for everyone who is watching, we're going to go section by section through this bill today and we're going to look at some of the language and understand exactly what it says and what it does. For the past four to five years, I have watched the march of this policy across the country, led primarily by the Goldwater Institute, as they have got state after state to pass what is politically popular. It's a really good feel good, political win type of piece of legislation which has a number of ultimate policy goals, one of which is my major concern is to undermine the FDA process and to ultimately create a loophole or exemption that has a number of serious ethical concerns. As I have watched the legislation pass in state after state and have eventually be taken up by the...on the federal level by the Senate, the House is considering a bill, I've actually used this language, this is model language from the Goldwater Institute, as a medical ethics teaching demonstration. So while I apologize and I will try to keep it within the time confines today, I have multi-hour lectures which I use with students as we walk through informed consent, basic principles of medical ethics, as well as the law, and have them look at whether or not these types of bills meet the standards and test of ethics. And as we look at and we go through the bill today, my opposition is not again to the concept or the ability of an individual to access treatment, but this bill does exactly the opposite in terms of its outcome. As Senator Hilgers discussed and I will describe, we're going to go directly to the language and I'll demonstrate that this bill is unconstitutional on the basis of federal supremacy. I'm going to walk you through some of the significant ethical concerns and challenges that exist with this type of legislation, and we're going to go specifically to the language of the bill rather than talk in euphemisms. We're going to talk about what it does with regard to patient safety; it's violation of the basic principles of informed consent; how it creates desperate and separate access for individuals who might be in needing medical care; how it is patently misleading to patients in terms of what it offers--this is not a right-to-try, this is a right to ask, there are no patient rights conferred by this bill; as well as the very real possibility that this bill exposes patients and families at their most vulnerable time in healthcare to exploitation. Now my opposition to the concept is not alone. I have passed around, as a starter for those of you who maybe don't want to listen to the debate, two letters that were submitted at the federal level to legislation and principles that were almost identical to what we are considering today. And I want you to look at both of them and I want you to look at the signatories of the groups who opposed this concept. One has over 40 signatories which represent some of the most important patient advocacy groups, including the American Cancer Society and

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others. The second actually details a number of the important research and other groups associated with the center for public interest and public health and outlines specifically their opposition to the right-to-try concept. So I think it's important if you have not taken a look at the actual language of the bill... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR KUEHN: ...please pull it up on your computers. Please follow along and know that I'm not trying to take you down a wild goose chase or talk in platitudes, we're going to talk specifics about what this bill does and what this bill actually says. So with that, I look forward to a robust debate and discussion today. One that I hope is with compassion, but also is also made with the clarity of our responsibility as lawmakers when adopting legislation into our statutes. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Mr. Clerk. [LB117]

ASSISTANT CLERK: Mr. President, a priority motion: Senator Kuehn would move to bracket the bill until April 18. [LB117]

PRESIDENT FOLEY: Senator Kuehn, you're recognized to open on your bracket motion. [LB117]

SENATOR KUEHN: Thank you, Mr. President. Members of the Legislature, I make this bracket motion not lightly, and it is a serious bracket motion. And in going through the opening and the time here, I want to walk everyone through the specifics of my concerns, and I know there is Exec session meetings and people are thinking are we headed into a three-hour discussion? I do want to make sure we walk through and that everyone who casts a vote on this bill understands exactly what they are voting for before they push the button. So as I discussed in my last remarks, I'm going to walk through first the constitutional issues and then move through some of the ethics issues and then we'll, on subsequent times, talk about the policy outcomes of these right-to-try laws. First, I would like everyone, if you're so inclined, to pull out your copy of the bill and I want you to look at Section 2, paragraph 4 of the legislation. In that particular section, it specifically designates that the drugs eligible must have completed Phase 1 of clinical trials and is not yet approved for general use by the United States Food and Drug Administration. So as Senator Hilgers spoke about during his time, the bill openly acknowledges FDA authority and says that any drug may be potentially eligible for use under this legislation first must have passed through FDA Phase 1 clinical trials. And we're going to talk a little bit about what that means. But with regard to the constitutionality, I'm not an attorney, but I want to refer you to a 2016 Ohio State law review article and I'm going to read directly from the article so I don't confuse the

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legal opinion in this article. It states: Right-to-try laws are unconstitutional because they are preempted by the federal FDA authority. The FDCA, which is the Food, Drug and Cosmetics Act, creates a comprehensive statutory scheme for federal regulations and the approval administration labeling and reporting requirements of drugs shipped in the interstate commerce and vest the USDA with exclusive authority to promulgate regulations in the area. Consequently, state laws infringing on that authority are null. Right-to-try legislation itself explicitly recognizes the supremacy of federal law, noting the drugs administered via the state laws must not only pass Phase 1 clinical trials, but also must still be involved in the clinical trial process. Once the FDA approval process commences, the manufacturer is by definition under FDA jurisdiction and thus bound to follow federal law. However, because right-to-try laws directly conflict with the Food, Drug, Cosmetics Act, it is impossible for a drug manufacturer to comply with both. Thus the law of preemption dictates that state law must cede to its federal counterpart. One of the things you need to be aware is that the advocates of the Goldwater Institute who are pushing this model legislation in state after state are aware of this federal preemption issue and they continue forward without concern. So if we pass this legislation and it's on record, I hope the other individuals who have attended law school in the body weigh in on this issue, we are knowingly passing a law which is preempted specifically by federal statute. And the language of the bill itself details and acknowledges and asserts that federal authority being given to the FDA. In addition, I want to move in to some of the general ethical concerns, one being the issue of safety. What we're saying with this bill is we're saying if you're terminally ill, and we're going to talk about what this bill does to define an individual who is terminally ill and some of the ethics and qualifications of that particular designation in a moment, we're saying that you don't deserve the same safety standards as an individual enrolled in a clinical trial or an individual who may have a chronic or other illness. Stage one clinical trials do nothing but determine the drug isn't going to kill you. And as a point of fact, 75 percent of the drugs that pass stage one clinical trials never see the marketplace. They are never approved. The reason that three out of four drugs that make it through stage one clinical trials never are approved is because they never demonstrate safety and they never demonstrate efficacy. So the stage one clinical trial approval is the lowest bar for approval. It does not prove that the drug isn't going to harm you. It doesn't prove that the drug is going to have any efficacy. It simply means if we give you a mega dose of the drug, it's not going to kill you. That's a pretty low bar for safety and for patient protection. So what we're doing is we're saying, if you have this amorphous designation of a terminal illness, maybe potentially a chronic illness, if a physician, no requirements of that physician to actually have specific requirements on end-of-life issues, determines you're eligible, we're going to throw safety and efficacy out of the window with some of our most vulnerable patients who are at end of life. This is really important, colleagues, because at the very principle of medical practice is a principle known as informed consent. An informed consent is specifically referenced in the language of this bill. So I ask you to take a look at Section 3, paragraph 4 where it states the patient must give written, informed consent for the use of the investigational drug, biological product or device. Informed consent on its face and definition is not possible with a drug that has only

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passed Phase 1 clinical trials. And it does so because it is not possible for the manufacturer of the drug, the physician or the patient to know the side effects and risks associated with the drug because those risks and side effects are not known. So on its face, informed consent is impossible. If you look further at Section 4, paragraph 4, it actually refers to that the description to between the physician and the patient must list the side effects if known. Again, the physician cannot, with any credibility and in good faith, know what the side effects are because they have not been determined. These stage one clinical trials may only have been through animal testing, never actually demonstrated safety on a human being. So if the physician is required under this legislation to describe the potential outcomes if known, they can't possibly do it. It is impossible to know something that has not been tested. For those of you who are concerned about healthcare access and equality of access, I think we need to understand exactly what patients are going to have access to this particular type of investigational drug. Again want to take you to Section 4, paragraphs 5, 6 and 7 of the bill, and in specific, I want you to take a look at the characteristics that are going to revolve around payment. Specifically, I want you to take a look at Section 5, and I hope everyone is paying close attention. It says that it contains a statement that the patient's health insurance carrier is not obligated to pay for any care or treatment consequence to the use of the investigational drug. Put your insurance carrier off the hook. You as the patient are the sole individual responsible for the cost of these investigational drugs. I want to draw a very close attention to one word in this legislation, and I hope everyone is listening because this is where patients could lose care. The wording of the bill says "pay for any care or treatments consequent to the use of the investigational drug." You try a right-to-try drug and you have a horrible reaction and you go into the hospital, your insurance carrier is off the hook. It's private pay. It's all you. Any type of further medical care following administration and use of an investigational drug, your insurance company is no longer required to provide payment. It's solely the responsibility of the patient. That's the language in this bill. We better think carefully before we adopt that kind of language. Section 6, which ought to make everyone who is concerned about long-term care and access to care really squeamish, it makes clear that the patients, and I quote, eligibility for hospice care may be withdrawn if the patient begins curative treatment with an investigational drug. If you're terminally ill, hospice care may be the only option... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR KUEHN: ...that you have available. If you access the legislation that we're looking at and contemplating here, you are refused hospice care. You take your way down, this is the language in the bill, folks. Finally, Section 7 makes clear that the patient understands he or she is liable for all expenses consequent to the use of the investigational drug, biological product or device. So twice we make reference to the fact that the patient is the sole financial responsibility for anything that comes after the point of use of this investigational product. We're making an access issue where only the most wealthy can possibly utilize this option, and in doing so they

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abrogate all of the financial protections of their insurance carrier and assume full financial liability for their healthcare, not just for the product, but from that point forward, from consequent to the use and beginning of the investigational drug. This is really bad language, folks. This is not good policy from an ethical perspective... [LB117]

PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR KUEHN: Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Kuehn. (Visitors introduced.) Continuing discussion of the bill. Senator Hilkemann. [LB117]

SENATOR HILKEMANN: Well, thank you, Mr. Speaker. Well, this is interesting. Let me begin with Senator Hilgers. Colorado, Iowa, Minnesota, Wyoming, South Dakota, and Missouri...Senator, would you be willing to take a question? [LB117]

PRESIDENT FOLEY: Senator Hilgers, would you yield to some questions, please? [LB117]

SENATOR HILGERS: Absolutely. [LB117]

SENATOR HILKEMANN: So you think that those neighboring states of ours, all of which have passed identical or almost identical language to this, are all not doing it constitutionally? [LB117]

SENATOR HILGERS: I haven't read them. But if they're identical or almost identical, yes. [LB117]

SENATOR HILKEMANN: So let me add to that that there are 38 states now that have passed similar legislation. So you're saying that 38 states don't have this right. Is that correct? [LB117]

SENATOR HILGERS: Yes. [LB117]

SENATOR HILKEMANN: On what do you base that, Senator? [LB117]

SENATOR HILGERS: Again, based on your representation that those states are similar to or identical in material respect to the bill in front of us, those states conflict with the valid use of federal law, the Food, Drug and Cosmetic Act, and the restrictions on interstate sale and use of

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drugs that have not passed through all the clinical trials and have been approved. Therefore under Article VI, clause 2 of the United States Constitution, they are in direct conflict with a valid federal law and therefore are preempted. [LB117]

SENATOR HILKEMANN: Now, Senator, it would seem to me that these bills have been...we're kind of late to the dance on this issue, quite frankly. This has been going on about six or seven years now that this movement has been there. So if this were unconstitutional, wouldn't you think that one of those states would have had a challenge to this at this point? [LB117]

SENATOR HILGERS: It wouldn't surprise me if there was a challenge. In fact, I probably would expect it. Doesn't surprise me that there hasn't been and probably explanation is that people understand that it's in conflict, so haven't really used it. But I would have expected a challenge by now. [LB117]

SENATOR HILKEMANN: So you're saying that 38 states don't have it right and that this bill is going to lead Nebraska to be the one state that's going to be challenged on this down the line when we have the first patient that tries right-to-try? In order to try to get a drug that may, and I absolutely want to know...to emphasize that these are treatments of last resort. [LB117]

SENATOR HILGERS: Senator Hilkemann, I don't just think 38 states don't have the right, I think 50 states don't have the right. And if Nebraska were to pass it and it were to be used, it would be unconstitutional. Regardless of the ultimate policy outcome, we have an obligation to understand what powers we do and do not have, and this would be unconstitutional, in my view. [LB117]

SENATOR HILKEMANN: Well, Senator, if you would, how many states now allow marijuana sales, either medicinally or recreationally? [LB117]

SENATOR HILGERS: I don't know the exact number, Senator Hilkemann, but quite a few. [LB117]

SENATOR HILKEMANN: Yeah, I think it's about 25 now. So what's the federal government doing on this? This is transporting illegal...what's happening here? [LB117]

SENATOR HILGERS: That's a great question, Senator Hilkemann. And when we have the debate on Senator Wishart's bill, I stated and will state now that the federal government has been derelict in their duty. There is federal law when it relates to marijuana, medical marijuana, and the federal government has absolutely refused its responsibility to enforce federal law. [LB117]

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PRESIDENT FOLEY: One minute. [LB117]

SENATOR HILKEMANN: So you say that they've refused it on marijuana, but on right-to-try, which 38 other states already have, they'll challenge that. Are you saying that, Senator? [LB117]

SENATOR HILGERS: I'm saying regardless of who will challenge it, it's unconstitutional, in my view. We ought not to pass it. We live in a rule of law society, Senator Hilkemann. We should not be passing laws based on the hope that even though they're unconstitutional someone won't call us on it. [LB117]

SENATOR HILKEMANN: Thank you, Senator. I would also like to point out that on the information that Senator Kuehn passed out, he said that as long as the organization, the American Cancer Society, it does not show up on that list of units. I will come back and we will talk about other issues as we go forward. [LB117]

PRESIDENT FOLEY: Thank you, Senators Hilkemann and Hilgers. Senator Albrecht. [LB117]

SENATOR ALBRECHT: Thank you, President Foley. I just have a few questions. When I sat down and read this bill, I felt like...we've had a family member who had pancreatic cancer and they reached the end of how they could treat this terminally ill patient, but he was at the Med Center and they did try clinical trials. Now, whether they were approved or not, that's my question. Don't we already do this? And the other question I would have is my concern for the insurance companies, because this particular individual became very violently ill with the trials that were tried, and the insurance companies play an important part in this. I'm still listening to the debate and I would yield the rest of my time to Senator Kuehn if he would like it. [LB117]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Kuehn, 4:00. [LB117]

SENATOR KUEHN: Thank you, Senator Albrecht. Just to correct the record, on the letter addressed to Paul Ryan and Nancy Pelosi, the first signatory on that letter is the American Cancer Society Action Network, so they are the very first signatory on that letter. I want to continue forward and discuss some of the additional issues that we need to think about with regard to this bill. There is a serious concern in right-to-try legislation that this exposes patients to significant exploitation by nefarious or potentially bad actors. And in doing so, I want to go, and I want everyone, again, if you're so inclined, to actually take a look at the bill. I want you to look at Sections 8, Sections 9 and Sections 11 specifically. And I want you to recognize and I want everyone who votes green for this bill to understand exactly what kind of an exemption they are giving to individuals, to pharmaceutical companies, and to physicians who try these

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unregulated, unapproved medications. First, I want you to take a look at Section 8 and I want you to recognize that it specifically creates an absolute carve out that prevents the State Department of Public Health, Division of Public Health and Medical Licensure from revoking, failing to renew, suspending, or taking any action against a healthcare practitioner's license pursuant to any action with regard to an investigational drug. So we're giving individual physicians blanket immunity and protection from their license and we're tying the state's hands in the event of a bad actor associated with use of unproven, unsafe investigatory drugs. The second in Section 9, it gives a complete immunity to a physician if they, quote, unquote, are acting in good faith, which also is not defined in a very interesting legal term to pursue. Section 11, for those of you who are concerned about nefarious actions with a manufacturer or some small start-up pharmacy who may want to create a drug and use this as a means of bypassing FDA approval and experiment on vulnerable patients, it actually creates a full exemption for any manufacturer of a drug, device, or product from any harm caused by their patient. Are we really that concerned about what really is not an effective piece of legislation anyway that we're ultimately going to give full immunity and exemption to healthcare providers, manufacturers for their products used in an unlicensed and unregulated way? I think it's a problem. And I want to give you a scenario that we all need to consider because everyone is pointing out, wants to talk about scenarios associated with someone at the end of their life... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR KUEHN: ...and things get difficult. But there is a very real bad actor scenario that is a strong potential that allows individuals, whether that be, let's say, a small compounding pharmacy that wants to develop a formulation of a drug, but doesn't want to go through the FDA approval process. All they need is a single physician who recruits patients who are terminally ill, gets stage one approval. They can then utilize these individuals in this right-to-try kind of phenomenon as an opportunity to get human data in a process they never otherwise would be able to. And you know what? The patient has abdicated all of their rights, assumed full responsibility for the consequences of any damage that may come. You've exonerated the healthcare provider, and you have provided full immunity for the manufacturer. And if you think there is not somebody out there in a start-up somewhere with an organic chemistry degree who looks at this and doesn't see this as an opportunity... [LB117]

PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR KUEHN: ...you're wrong. [LB117]

PRESIDENT FOLEY: You're next in the queue, Senator, you may continue. [LB117]

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SENATOR KUEHN: Thank you, Mr. President. So that then brings up a very important issue associated with these right-to-try bills and that is that on their face they are misleading because they do not provide a right to anything. They only give you a right to ask. In Section 5 of this bill, specifically uses a term which thanks to Senator Harr yesterday we spent a lot of time talking about and that was "may" versus "shall." It says that they may provide access; they don't have to. There is...and I saw in the handout from the Goldwater Institute that was passed around, again, this doctor in Texas that claims to have 100 patients, you should know that the drug that they're talking about is available in clinical trials, so that's not actually a legitimate example, there have not been any cases of right-to-try legislation in any of the 38 states that have adopted it actually being used in a single patient. It gives patients the illusion that they have a right to medications that they do not have. And at the end of life, nothing is more cruel than false hope. And that is for that reason that so many medical ethicists have come out in strong opposition to this legislation as it preys upon the hopes and the fears of patients and their families at the end of life giving them the illusion that they have access to some sort of miracle drug which has never had any testing for efficacy and no standards of safety other than if you take it it's not going to kill you outright. There are a whole host of other ethical considerations which I'm not going to go into unless we need to, but I hope that the body considers. Who decides what the difference is between a terminally ill patient and a chronically ill patient? Senator Hilkemann in his opening referred to multiple sclerosis in his opening. Multiple sclerosis would not qualify under this bill. It's not a terminal disease, it is a chronic illness. Where do we draw the line between individuals who are simply in a chronic disease and we allow them to then access unsafe medications or potentially be exploited. This isn't necessarily when their end of life. The bill says "will die soon." What is soon? Six months? A year? Five years? Two weeks? It's a moving line. And the possibility for exploitation of vulnerable patients by people with nefarious intentions is so wide you could drive a truck through it. Who makes that qualification? If you get a sketchy dermatologist under this bill, they can say and make you qualified as being eligible for an unsafe medication. There's no qualification for a board certification in internal medicine or any other subspecialty that ensures that the person making this designation is qualified to do so. And here's a final question which when working with students they always ask, if you had the option of going to a doctor and getting access to a drug that has bypassed the FDA clinical trials and you can skip to the head of the line, why would you ever do a clinical trial when you know that in most clinical trials there's a chance you might get the placebo? Clinical trials are the foundation of our medical safety system. The fact that we have double-blind clinical trials ensures the safety, the efficacy, and the validity of pharmaceuticals in this country. If we create a work-around where wealthy individuals...because you have to pay for all this and you have to pay for your consequences, if they can bypass the FDA approval process knowing that they don't have to go get the placebo or take a risk of getting a placebo and can start accessing drugs early in the pipeline, we have fundamentally undermined the basic system which provides consumer and patient safety... [LB117]

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PRESIDENT FOLEY: One minute. [LB117]

SENATOR KUEHN: ...for drugs in this country. So for these to work there has to be three parties which come together, and as of yet in the United States, three parties have not come together. You first have to have a company that's willing to offer it, knowing that if the drug has consequences, it may damage their ability to take that drug further through the FDA process, which is why you don't see any big pharmaceutical companies lining up to make these drugs available in these states. You have to have a doctor that's willing to prescribe it; and you have to have a patient who has the ability to pay for it and pay for all potential consequences from there on out without insurance and without access to hospice care. Those are the three requirements for a right-to-try bill to actually have any impact on public policy. So as we continue forward and you decide what you want to do on this particular bill, keep all of those questions and facts in mind because they're real and they're in black and white in this bill. So please read it and please understand what we're putting in statute. [LB117]

PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR KUEHN: Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Kuehn. (Visitors introduced.) Continuing debate, Senator Erdman. [LB117]

SENATOR ERDMAN: Thank you, Mr. Lieutenant Governor; good morning. I appreciate Senator Kuehn going through this bill line by line. As I was listening to the debate, a situation that happened on our farm about 30 years ago comes to mind. I was visiting with some people we had hired to work in the fields and I was trying to describe to them what I wanted them to do and I continued to raise my voice, similar to what Senator Hilkemann did. And after a few minutes my son, Phillip, said, he was about 10, he said dad, these people aren't deaf, they just don't understand English. And so by raising your voice, I don't know what it means, but that's what we seem to do. And so Senator Hilkemann says do we do anything that is unconstitutional? Let me give you another example. When I was a county commissioner in Morrill County, we had some buildings that were owned by the counties as a group called Panhandle Community Services and these facilities would rent these apartments to people for 10 percent of their income. Because the county chose...because the county charged a fee to live in those facilities, it was my understanding that the county should pay property tax on those facilities. One of the people on our board was the head of that PCS and he said, no, that's incorrect, because it's county owned, it should not be taxed. Well, there are four reasons why someone doesn't pay property tax...or an entity and that's free, a church, a school, or a cemetery, and those were none of those. So we put those on the tax rolls, they took us to TERC, we won the TERC case; they

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took it to court, we won the court case. We are the only county that collects property tax on those facilities. All the other counties in the panhandle, as far as I know in the state, don't. We have proven that they should be on, but the others have not. So just saying because 38 states have done something doesn't qualify or make it constitutional. I have been here a little while and I listen to Senator Chambers when he talks about being trained in the law, and I am not as you already know, but when Senator Hilgers stands up and says what he understands about the law, and he is trained in the law, it's pretty difficult for somebody with a medical background or medical training to argue with somebody who is trained in the law. So when it comes to the law, I'm going to defer to the one who has the training. And so I'm going to agree with Senator Hilgers. And as I said earlier, I do really appreciate Senator Kuehn going through this bill one line at a time. He's very knowledgeable on the situation and what we're talking about. So listen this morning to what Senator Kuehn has to say, because I am in favor of the bracket motion. And if I had any time left, I would yield to Senator Kuehn. [LB117]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Kuehn, 1:40. [LB117]

SENATOR KUEHN: Thank you, Mr. President; thank you, Senator Erdman. I'm not going to belabor this bill through the morning. I have presented before you what the issues are, and, ultimately, as an individual senator you're going to have to make up your mind. There are a couple of things I do want to point out. We talk a lot about on this floor and some senators are really diligent about making us be thoughtful about what we put in statute, and I think we need to really take time with the language of this bill, understanding that it's template legislation coming directly from the Goldwater Institute that it does have some specific complications that present a lot of problems, whether that be the constitutional issues, which I appreciate Senator Hilgers discussing; whether that presents the issues of civil tort and legal liability associated with the exemptions for healthcare providers, for insurance companies, taking them financially off the hook, for pharmaceutical and medical device manufacturing companies, we're putting into statute some really dangerous precedence. And I for one don't feel comfortable with them. And frankly, when we're talking about a patient at the end of their life, I will never ever support legislation that takes away their right to hospice and takes away their right, under any conditions, to insurance coverage. When we are talking about patients at the most vulnerable part of their life, and we're saying, well, they have tried this experimental medication, it's their last ditch effort, and then we're going to say--but you're not eligible for hospice care anymore. Folks, that's a really dangerous precedence. [LB117]

PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR KUEHN: Thank you. [LB117]

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PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Hilgers. [LB117]

SENATOR HILGERS: Thank you, Mr. President. I think this has been a really valuable discussion. I want to sort of touch on a couple of the points that Senator Hilkemann and I were discussing, because I think this really goes to the heart of our constitutional system, and I think more importantly really the rule of law. There is, I think, no doubt there's a conflict between this bill and federal statute. And while I do think that at times our federal constitution and the powers provided to Congress have been interpreted by courts to be too broad, I think much broader than supported by the language in the constitution. I don't think there's any doubt that the Food, Drug and Cosmetic Act is an appropriate exercise of Congress's power to regulate interstate commerce. I don't think there's really any doubt about that. And so...if that is so, and if it is so that LB117 is in direct conflict with that law, and I don't see any way that you can interpret it not to be in conflict because when the federal government says no person shall sell a particular kind of drug and the state says you can purchase or use that kind of drug, I don't see how that can be interpreted in any other way than being in conflict. When that's so, under the supremacy clause, this is not constitutional, period. Now the arguments, I think, raised by Senator Hilkemann I think are really important to address, because I think they go to a broader discussion and, I think, an important part of our society's reliance on the rule of law. And the arguments brought by Senator Hilkemann were not...well, it's not in conflict, or the federal law that governs the subject matter is not under proper exercise of Congress's power under Article I to regulate interstate commerce. It wasn't any of those legal arguments. Instead, the arguments were different, and I think they're enlightening. The first argument was, well, this is really important policy, these are people who are at the end of their life. And as Senator Chambers probably remembers from law school, there's a saying we hear a lot which is--hard cases make bad law. And part of that saying...I think it was from Justice Holmes, means we shouldn't alter our rules or our laws just to address one hard case. And in this case, what we're dealing with is an important policy perspective, but we have to do it through the proper channels. And, in fact, the proper channel here is through Congress. And, in fact, the Senate has passed a right-to-try bill and it is waiting action through the House. So in our current constitutional system, the appropriate way, if you feel this is an important policy goal, is not through an unconstitutional state action, it is through federal action through the Congress. And I would encourage you, if you believe that this is an important legislation that we ought to have, to encourage your U.S. representatives to act on that right-to-try legislation. I think it was brought by Senator Cornyn, if I'm remembering correctly. So argument one is, well, this is important policy. Well, really important policy that is unconstitutional is unconstitutional. The second argument is, well, other states have done this; well, 38 other states have done this. And candidly, I think that does not make a bit of difference for the analysis that we have. The question is whether or not it is constitutional. That's the question. As determining whether it's constitutional, in no case do we look at whether other states have also passed unconstitutional laws. Now it might be, I would listen to a state's law that is similar to this one that has passed constitutional muster from federal district court. That would

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be of interest, because that district court would analyze the law under the constitution and maybe come up with some argument that I hadn't considered. But there is no such case that I'm aware of, certainly Senator Hilkemann hasn't identified any. And the other argument, I think is, well, in another instance, medical marijuana or marijuana, the federal government hasn't acted there, so therefore that means this is constitutional or we should pass it, I suppose. Again, the constitutional inquiry is not what has happened in other context. It is very simple--does this conflict with a validly issued federal law? The answer to that is absolutely yes. And I think in other context... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR HILGERS: Thank you Mr. President. And I think we should not rely on other context, especially in instances in which the executive...the federal branch has not enforced federal law. I think that might be one of the worst reasons to support this bill. We need to encourage the people who enforce our laws to enforce them, whether they like them or not, they need to enforce our laws. And the notion that we would pass LB117, if we all agree it's unconstitutional, because someone might not call us on it, I do not think is a reason to support this particular bill. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Hilkemann. [LB117]

SENATOR HILKEMANN: Thank you, Mr. Speaker. And I would like to...if Senator Erdman is here, I would just like to say to him that you're exactly right. It is not...I was a little taken...I have been taken aback this morning, to be quite honest with you. Senator Hilgers and I had a conversation about this several months ago regarding it. I thought that we had had this measure worked out. I went around, I thought, to everyone and talked to folks about this bill, it's not a new bill. It's been around for three years and I thought a lot of the questions that could have been had on this would have been brought to me by now. So this morning I feel really blindsided on this. And I'm sorry. You know, I would have thought that if this was such a terrible bill, this has been heard twice. There's been no opposition to this bill in testimony. We're also mixing up something here. We're talking about a state...the document...one of the documents that Senator Kuehn passed out, and apparently I don't have both of the documents that you passed out, Senator, because you're actually talking about the Senate statute, that's the federal. The federal law is different than the state law on right-to-try. And I cannot emphasize enough that this is the last resort for these people that choose to try the right...use the right-to-try. By its definition, if you are being used...you're using medications, you cannot go into hospice care. The only thing that they will give you is some pain medication. You aren't being treated when you go into hospice care, so you're not really giving up your right to the hospice care because you already said even the right-to-try didn't work. So that's why that's there. There are no other options. And

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then the question was this is for the wealthy. Well, I want to tell you, the wealthy are doing this already. They're going to Israel, they're going to the different states. They're going to different countries that have these drugs available to try. These people are...when you get that conventional thing saying there's nothing more that we can do, but...and there are therapies, there are treatments, there are drugs that are used in other countries for these particular...that are in the trial stages in the United States, have not gone through the entire FDA process, that, you know, people who get desperate with ALS or Alzheimer's, or something of this sort, you know, I'm going to go to Israel and I'm going to try it if I have ALS. Well, you have to have a lot of money to go to Israel and then you have to pay for that out of your pocket as well. Wouldn't it be better if these entities are being brought forward that it would be available for people in Omaha, Nebraska, that they didn't have to go to Israel. In fact, I'm going to mention this, we have a famous internist in Omaha just recently passed away of ALS. In fact, they used his illustration on it in my testimony. He did go to Israel because he wanted to try. He was a wonderful physician. And, Senator Erdman... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR HILKEMANN: ...you said you're referring to Senator Hilgers because of his legal knowledge, well, I'm the only practitioner in this body. I'm a podiatrist, but I'm also a medical practitioner. And, you know, when there are things that...if you can help a patient and they're at the end of their life...so, you know, they're doing this in Europe, if we can try it here. That's what right-to-try is all about. There are no other options. Will they lose their insurance? They're at the end of their rope. This provides hope to people who are most hopeless. [LB117]

PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR HILKEMANN: Thank you. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. Senator Briese. [LB117]

SENATOR BRIESE: Thank you, Mr. President; good morning, colleagues. I wasn't going to speak on this bill, but I did want to make a couple comments after listening to some of the testimony here and comments. I support the concept in Senator Hilkemann's bill, but as I listen to the debate, I think maybe some tweaks to the language of the bill may be in order. But again, I wanted to comment on some of the things that were said so far. And we can talk...one thing that struck me, we can talk all we want about reducing cumbersome burdens and regulations, but here, all of a sudden, we're talking about keeping cumbersome burdens and regulations in place, making sure the FDA procedures and rules are left in place. And we can talk about constitutional concerns, but I don't believe I have heard any indication that the laws enacted in what, 38 other

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states, have been adjudicated by a court to be unconstitutional. We have to remember that what we pass here is presumed constitutional until adjudicated otherwise. And we can cite law review articles, but we have to remember, law review articles is simply an opinion of the author, has no judicial weight, certainly not a judicial opinion, certainly not judicial precedent. There was concern over the informed consent standard. But informed consent is not an absolute standard. It's not possible to delineate all risks when someone signs an informed consent. Only the known risks must be disclosed and must be consented to in my view. And there is concern also that under the language of the bill here, the patient assumes financial responsibility for the cost of the consequences of this treatment. And to the extent that the patient assumes the cost of these drugs...or the consequences, it would seem to me that that is perhaps should be his or her choice and I think that perhaps the patient should have the ability to choose that and assume that responsibility. And there was a suggestion earlier that Section 11 provides immunity to the manufacturers, and I disagree with that. The act does not...the act simply states it does not create a cause of action...a private cause of action. I don't see that it gives immunity. If you hold yourself out as a manufacturer and supplier of these drugs, you're still held to a standard of conduct. And again, I don't believe that language gives that company or individual immunity. I believe you're still held to a certain standard of care. But anyway, I'm going to continue to listen to the debate, very interesting debate. I appreciate everyone's comments on this and look forward to hearing more. Thank you. [LB117]

PRESIDENT FOLEY: Thank you, Senator Briese. Senator Schumacher. [LB117]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. You know, I'm a little disappointed. I'm not getting called out into the lobby and the lobby is not trying to twist my tail on any of these issues. And even though they never could, it was always fun to have them try. And so I come to the microphone today without any input from those folks out there, but I did listen to the arguments so far. And I have actually parsed through and read the bill. Had you asked me in generic terms--are you for this right-to-try, the desperate action of our fate as human beings at the end? I would have said, sure. And were I standing in the Congress, I almost without thought, say, let's do something, let's fashion some language along these lines, fix it up a little bit and pass it. But I'm not standing in the Congress of the United States. Here are the thoughts that I have so far. Section 9 on page 4, poorly worded section. It gives unlimited immunity for everything to a physician who happens to be acting in good faith and in the course of his professional practice may not be subject to arrest, prosecution, penalty, or denial of any right or privilege. It doesn't say for work done under this act. So he's driving drunk, he can't be arrested because he's a physician doing something under this act. That definitely needs cleaning up. Section 10, no official employee/agent of the state may block or attempt to block an eligible patient's access. Where do we see now similar language all over the country? It's in legislation being passed by sanctuary cities to block the assistance of local law enforcement to the enforcement of federal law. That paragraph creates a sanctuary state. Our law enforcement

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cannot support federal law enforcement in the course of exercising federal enforcement activities. This is the same kind of concept as we see in the marijuana law where the federal government, probably knowing that its position on marijuana is dated, is looking the other way, or certainly not enforcing very hard the marijuana laws that states have adopted. And, in fact, the stock market has got marijuana companies on them. If that isn't aiding and abetting the sale of illegal narcotics, I'm not sure, but it's there. Last year we backed away from a piece of legislation called the Internet sales tax because it was blocked by federal law. So there's a lot of issues here; this is probably not the room to do it in, even though the idea is good...generally. But then I think of an interesting thing, we had a bill introduced by Senator Chambers regarding the right to die. Some of the same flavor underlies that bill as underlies this. It's our humanity and recognizing our mortality and trying to grapple with that issue. And with that bill kind of in mind, I ask myself, well, take the language here, let's suppose one of these drugs by itself were in mixture with another one of these drugs, or in mixture with an over-the-counter drug, or in mixture with peanut butter, whatever, hasten death and was lethal? [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR SCHUMACHER: All right. This bill is also right-to-die legislation. Read it that way. It won't take long for a chemist to figure out how to mix these things together and trigger a right to die. And that may be okay. So far, this body has not found that okay, but it might be. But you should be aware that that is one angle that can be played using this language. And read it carefully. It doesn't say that it can't be used that way. This is defectively written legislation in a wrong forum. And while in principle it is good, in language and law that we would be adopting, it's not so hot. And it's feel good legislation to that extent, but it needs a lot of work and it needs the work done in Washington. Thank you. [LB117]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Albrecht. [LB117]

SENATOR ALBRECHT: Thank you, President Foley. Senator Hilkemann, could you just take a quick question please? [LB117]

PRESIDENT FOLEY: Senator Hilkemann, will you yield to a question, please? [LB117]

SENATOR HILKEMANN: I certainly would. [LB117]

SENATOR ALBRECHT: Okay, I understand, before I came, that the university, the medical center was investigating cannabis, correct? Could something like that be part of this just to make them feel better in the end? [LB117]

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SENATOR HILKEMANN: Senator Albrecht, cannabis is not approved by the FDA. It could not be used. [LB117]

SENATOR ALBRECHT: But in some of these other states that you have said that this actually happens, are they using...I mean, if it's an experimental drug and it hasn't been approved, you're saying that these are drugs that have not been approved, correct? They could try? [LB117]

SENATOR HILKEMANN: No. They have to...they have had...and I'm going to...thank you for that question because I wanted to get back to Senator Schumacher's comment just a little bit ago when he said... [LB117]

SENATOR ALBRECHT: And I'll yield my time to you because I just...I understand that you need to have more time on that. But my concern is that something like that, if it was in the testing stage and then it came to our state, and it could come to our state because of this legislation, that would concern me as well. So you're welcome to my time. [LB117]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Hilkemann, you've been yielded 3:30. [LB117]

SENATOR HILKEMANN: Thank you, Senator Albrecht. Make it very clear, this is not a backdoor way for marijuana. And it is...because marijuana is not an FDA-approved drug. These drugs have had to have at least passed the first phase of the FDA trials. Therefore, as Senator Schumacher mentioned just a little bit ago, we're going to get some chemists that are going to put some chemicals together and it's going to become a way for a right to die. Well, I'm sorry, those chemicals would certainly have had to have gone through the FDA trials. And if it's a situation where those...it's going to cause death of the patient rather than aiding in anyway of improving health, then it would not be...it would not go through...it would not have passed the Phase 1. That's the important thing that this is. And we're not...is this going to be a widely used mechanism? No. There are physicians in Texas using this routinely now for some brain cancers. We have examples...we can get these passed out, of other areas, several physicians that are using this in other states, in Florida and Oklahoma, etcetera. This is a very small, a very small segment of the population who will ever, ever qualify for that. We've talked about the Compassionate Care Act that's part of the FDA process. Well, it's really interesting, prior to the starting of this movement of right-to-try by various states, the FDA process would take months and months, even people started saying...some people said it took up to 15 months in some cases. Well, on a lot of people don't have 15 months. Now they...one thing, if the right-to-try movement, if we never get it in the state of Nebraska, which I think would be sorry, but what it has already done, it has...the FDA has suddenly moved their Compassionate Care Act movement so that people can

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use the compassionate care portion of the FDA process as well. And so this is a choice thing for people, and we talk about have choice. This is...I find this kind of interesting. [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR HILKEMANN: This is a body that's made up of more Republicans than it is of other persons, this is part of the Republican platform is that we get right-to-try legislation in our states. I think if you listen to the State of the Union, our President referred to...it was a high priority to him to get right-to-try. Well, we have an opportunity to do it right here in Nebraska by advancing this bill. And so, I just...I think we're trying to make a bunch of gremlins out of this thing and we're taking...trying to make...this is a bill...this is one hopefully it will create hope. Maybe it will lead to someone...a drug that will actually improve and help them and they will recover and then it's a real hope and it's a great thing. [LB117]

PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR HILKEMANN: It just gives people a right to try. [LB117]

PRESIDENT FOLEY: Thank you, Senator. [LB117]

SENATOR HILKEMANN: A right to try. Thank you. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. Senator Krist. [LB117]

SENATOR KRIST: Thank you, Mr. President; good morning, colleagues and good morning, Nebraska. There are a couple of ways to debate and argue and potentially even kill a bill. One of them is death by fiscal note and the other one is to profess beyond a shadow of a doubt on the floor of this Legislature that what we are about to do is unconstitutional. I detest both of those kinds of debates. A warning that something might be unconstitutional is clearly warranted, but when you have the body of evidence that we have with this particular subject matter with 38 other states who have not been contested in the way that they have treated this issue, then I think that your siren is falling on deaf ears. I don't believe it is unconstitutional. And I think that the suggestion that this is a bad piece of legislation is disingenuous. I think there are parts of this piece of legislation that could be better than what it is. And I think we would pass it past General, and in-between General and Select, have the critics who at one point or another have either acquiesced and said nothing to the introducer, or now have found a reason that they think things need to be cleaned up with the product, give them some time to take a look at it. Anybody in this room not dealt with someone with an end-of-life decision? Anyone in this room ever not

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seen what a horrific cancer can do to a family? Boy, I would try anything. And I would drive my family or fly my family in any direction to make sure that it's possible for them to try. We had a member of this body, who is now in Washington, D.C., and his brother is a well-known doctor in the local area. And he has suggested to a member of my extended family that he can't do what he wants to do to try to save his life, so he sent him to another state. So personal experiences and bad things that have happened give us some kind of basis by which we can stand up here and try to convince each other that it is, (a) unconstitutional; (b) it's going to cost too much; (c) it's a way of bringing marijuana into the state; I mean, go right down the list. The sirens are falling on deaf ears with me. I've seen enough of these kinds of cases and heard enough and been part of those end-of-life decisions for both my parents and my wife's parents to know that if there's a hope, you will go to the ends of the earth to try to make sure that it's taken care of. And the important thing is here, this is not voodoo, this is not witchcraft. This is a drug that has already gone through some of the FDA testing and can be used and should be used. Senator Kolterman stood up earlier today and thanked all of us for being part of his foundation during a very difficult time in his life. I heard his wife at a discussion and a presentation at the University of Nebraska Medical Center of the new cancer center and it was compelling. It was a lady who wanted to survive. [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR KRIST: A lady who went through so much in terms of treatment, most of us can't even imagine what she went through. And I bet if she was here on this floor today, she would tell you she would have gone that extra step if it was possible or if the doctor asked her or presented that possibility. This is not unconstitutional. This is not witchcraft. This is not voodoo. This is not the camel getting his nose underneath the tent. It is what it is. And sometime between General and Select, those that don't believe in this bill can help Senator Hilkemann clean it up, if that's what needs to happen. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Krist. (Visitors introduced.) Continuing discussion, Senator Wayne. [LB117]

SENATOR WAYNE: Thank you, Mr. President. I originally pushed my button because there was a group of different senators in here during the day on this debate, so I wanted to get into a completely different topic so they could listen, which I will get back into. But Senator Hilkemann actually said something I believe is incorrect. There is actually a CBD oil company who have already went through Phase 1 and Phase 2, and I believe they had a successful or are currently doing a Phase 3 FDA-approve process. I believe it's GW Pharmaceuticals. I will verify that when I get off the mike. But in that regard, underneath your bill currently what is illegal in Nebraska, CBD oils would be legal underneath this process. So we would have to tweak that.

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And I am in favor of CBD oils, but just in case this ever came up in the record, I at least wanted to correct that, that there is at least one company that I know whose CBD oils, which is hemp, which is a strain of cannabis, that is through the Phase 1 and Phase 2 process. But I will verify that again and push my button. But for those who are listening in the Chamber, today we're kind of talking about what the good life means. Senator Krist kind of talked about some real moving issues. I just wanted to point out that there was a report in the World-Herald yesterday on disparities in Nebraska and it was talking about the Kerner report that was printed in 19...Kerner Commission, 1968, 50 years later. And the reason this was done in 1968, and the Presidential commission issued it, was because they believe America was moving towards two separate societies, one black and one white, one separate and one unequal. And they issued a report 50 years later and I just want to give you some interesting facts about Nebraska. Nebraska's poverty rate is higher than any of...most all the other states in the nation. Nebraska's unemployment rate is 9.6 percent, which is almost triple the white rate in this state. I will tell you in my district and Senator Chambers' district, we reached some census tracts up to 30 percent. Nebraska has a higher and bigger gap than the rest of the country in home ownership. And, Senator Groene, Nebraska's black incarceration rate is nine times higher than their white counterparts. I say that today, as we have a discussion about other issues, that 50 years later we have not moved the needle on inequality in our state at all and, in fact, we've went backwards on many categories. It is time for this body, whether it's through Senator Briese's, through Senator Smith's tax bills to address this, it's time for this body, in education, through TEEOSA, to address this. And to all of the people and nonprofits and all the people who are what I call making money off the symptoms instead of treating the actual cure and finding a cure to the problem of poverty, I don't want to have any more education debates about what we need in schools. If poverty is the issue, then help us create jobs. Let's get to the core of the matter, and it's jobs. So let's have that conversation and I'll let this debate continue to happen. But anytime that I see new senators or different senators back in the Chamber, I'm going to remind them of a different debate that needs to happen and keep this on the conscience of this body. We have to provide jobs. We have to do a better job of making sure equality and equity is provided throughout this state. And I'll make sure that on Final Reading everybody gets a copy of this report and I'll take a little time to make sure you have time to read this report because it is interesting. When we talk about the good life, we need to have a conversation about the good life for who? [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR WAYNE: With that, I'll submit. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Wayne. Continuing discussion, Senator Crawford. [LB117]

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SENATOR CRAWFORD: Good morning, Mr. President. Good morning, colleagues. I stand in support of LB117 and AM46, and opposed to the bracket motion. And, colleagues, I also want to stand up just to clarify what's happening with the UNMC study and how it is not related to LB117. So the UNMC study is a study of an FDA...a product, a cannabis product, going through FDA trials, and it has made it through Phase 1 and perhaps Phase 2 of the FDA trials. And it is...we have allowed and provided authority for our university to conduct a study using that substance. And so it is a whole different legal issue and that is not related to this right-to-try bill. So we passed a bill to provide the authority for that exception to allow those drugs to be tried in a university setting, and there's actually a federal framework under which we passed that bill that allows investigation of hemp and low-THC cannabis products. And so we had that federal framework that we could use to allow us to provide access to this pharmaceutical cannabis that is being used in the UNMC study to good effect for some of our families. And so I'm very happy that we were able to do that and able to find a way to do that in a way that we could make sure that it was a bill that could be passed and not challenged. And again, it's not related to this right-to-try. So, colleagues, the right-to-try is an effort by states to say that there are some instances where we're going to make an exception to the law. And it is the case that the federal law, under standard federal law, this would be the case that this would be against federal law. But as a state, we're saying for these particular patients who are in this particular situation, we're going to make an exception. And actually there is a provision where the federal government can't compel a state to enforce a law. So it is the case that we have some wiggle room here to say, as a state, we're not going to enforce this law and we're going to allow people to have, in this very narrow circumstance, to have this exception to be able to have access to these drugs. And I believe that's why it hasn't been challenged in those 38 states. Because there is this opening in terms of the constitutional principle of not requiring a state to enforce a federal law that allows states to allow this exception to enforcement, is basically what we're doing with LB117, is we're saying we're not going to...we're going to say in this particular situation we're not going to enforce the law that would say you can't have access to these drugs in our state, and we're protecting the provider and not...making sure there's no enforcement against that provider in our state for this narrow particular situation. So I believe that is the pathway that allows the states to pass this bill and a reason why...one reason why it hasn't been challenged. The second reason it hasn't been challenged is that it isn't used very often. This is a very last-ditch opportunity and it's up to the drug companies to decide whether to provide this access. And in many cases actually what's happened, because this bill has passed in many states... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR CRAWFORD: Thank you, Mr. President,...is there's been increased pressure on the FDA and the drug companies to increase access to the other pathway that the opponents are talking about. And so the fact that states have passed this bill in many states has put added pressure on the FDA to speed up the access through their mechanism to allow access to these

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drugs. So I, again, stand in support of LB117 and AM46 and urge your green vote. Thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Blood. [LB117]

SENATOR BLOOD: Thank you, Mr. President. Fellow Senators, friends all, I stand in opposing Senator Kuehn's bracket motion and in favor of the committee amendment and Senator Hilkemann's bill. I was originally going to just sit and listen, but there are a lot of things I've heard that I'd really like to speak on today. When I learned about Senator Hilkemann's bill, the first thing that came to mind for me and probably others was the movie Dallas Buyers Club. I don't know if you're familiar with that story but it's actually about an electrician named Ron in Texas, who during the HIV epidemic where the terminally ill were not seeking or being able to find solutions to their illness and were really frustrated with the medical community decided that they were going to start seeking access to experimental drugs through illicit means. And when you watch that movie, you really realize that that is not how you treat other humans. When I heard Senator Schumacher say that this could ultimately be a right-to-die bill, I think it's the opposite. I think it's a right-to-live bill. I think--and of course I respectfully disagree, Senator--I think about the two people I know that were just amazing men that recently died from ALS that were friends of mine and how they suffered. And one was a person of means and he fought so hard. He traveled to other countries, because he had the means to do that, just trying to live one day longer, have one more moment with his family because he was not ready to leave this earth. And how could we take that away from any human being? And, frankly, the one thing I've learned on this floor is that if anybody wants to try and shoot down a bill, they try and find a way to say that it's unconstitutional, and I learned that lesson last year. And I guarantee that every bill I brought forward this year is to make sure that if anybody came to me and said it was unconstitutional, I could tell them differently. I think that's just another tack that we do to slow things down, and it obviously works, but let's start talking about what this bill is really about. It gives the choice and control over treatment options where it's most effective--the patient and their doctors. Not the patient and somebody they're talking to on the street, not the patient and something they're getting off eBay--the patient and their doctors, the doctors who provide them their medical care. And only 3 percent of the terminally ill get to participate in these clinical trials that we keep pounding on. So how about a bill for the other 97 percent? We're talking about human beings. I know if I were terminally ill, I would want to spend every last minute on this earth with my family and my eight grandchildren. I would never give up trying to find a way to stay alive. Quite frankly, I told my children never to unplug me if I'm ever on life support because just in case I might come back, because I want to live and spend every day with my family. And that's what this bill is about. We can start talking about how it's written and I know Senator Hilkemann is a fine legislator who would more than happy, more than happy to work on...with it on people...that work on it with the people here on the floor in between General and

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Select. But don't take away people's right to live. That's what this bill is about. And with that, I would yield any time to Senator Hilkemann. [LB117]

PRESIDENT FOLEY: Thank you, Senator Blood. Senator Hilkemann, 1:00. [LB117]

SENATOR HILKEMANN: Thank you, Senator Blood. I appreciate that. You hit it right smack dab what this is all about. It's giving people a chance, hope when all else has failed, and I'm going to develop that when I have my full five minutes. I'm going to tell you a story of one of the persons, why I bring this legislation. And thank you, Mr. President. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. Senator Ebke. [LB117]

SENATOR EBKE: Thank you, Mr. President. Senator Hilkemann said something a few minutes ago that really struck home and something that I wasn't aware of. He said that the right-to-try could be found in the Republican Party platform. And so I pulled that up and, indeed, the Republican Party platform says, from 2016: We commend these states...those states that have passed right-to-try legislation, allowing terminally ill patients the right to try investigational medicines not yet approved by the FDA. We urge Congress to pass similar legislation giving all Americans with terminal illnesses the right to try. Took me back to May of 2016, Senator Hilkemann, when you and I were sitting at the Republican Party State Convention. And among others in this body we were called out by the titular head of the Republican Party for not being adequately platform Republicans. It was on that day that I made my decision to switch because I wasn't adequately a platform Republican anymore because I happened to disagree on a couple of issues with the titular head of the Nebraska Republican Party. Since then, two lifelong members of the Republican Party in addition...well, one other in addition to myself who are members of this body have decided to change their voter registration. I don't know that those of you who are now no longer adequately platform Republicans would fit into my party, but I think you ought to be looking for another place to go. So with that, I will yield the rest of my time to Senator Hilkemann. [LB117]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Hilkemann, 3:00. [LB117]

SENATOR HILKEMANN: Thank you, Senator Ebke. I certainly remember that day very well and we both swallowed very hard. But I want to just clarify something that Senator Wayne said earlier, has been given information that the tests--and I think that Senator Crawford followed it up--that the cannabinoids that are being tested at UNMC are not marijuana. Is that correct? I think that that...Senator Crawford, I guess I would...let me ask that as a question to you. [LB117]

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PRESIDENT FOLEY: Senator Crawford, will you yield, please? [LB117]

SENATOR CRAWFORD: Yes, I will yield. Senator Hilkemann, the Epidiolex which is being tested... [LB117]

SENATOR HILKEMANN: Right. [LB117]

SENATOR CRAWFORD: ...at UNMC is made from cannabis. It is a cannabis that's low-THC cannabis so it doesn't have the ingredient in cannabis that makes one high, but it is actually made from cannabis. It is extracted, excuse me, it's extracted from cannabis by a pharmaceutical company and it has been going through the FDA process. It is not completely through the FDA process, but it is a cannabis extraction that is going through the FDA process. [LB117]

SENATOR HILKEMANN: Thank you for that clarification, because, again, that was one of, when I went to talk with each of you about this bill, that some...is this a back door for marijuana, and it's not a back door for marijuana. How much time do I have, Mr. Speaker? [LB117]

PRESIDENT FOLEY: 1:30. [LB117]

SENATOR HILKEMANN: Let me tell you about Chris (phonetic). Prior to my days of going to podiatry school, I taught school in a small school in southeast Nebraska. I've kept in contact with a number of those students and one of those students developed a real appreciation for my wife, the work that she did in Spanish and so forth. And Chris (phonetic) got a terminal cancer, a brain cancer. She had very little resources. And with what little resources she had, she was so desperate she went to Mexico because she wanted to...there was...she heard about some oils that she could get in Mexico that might help her. I encouraged her not to go; I said it's going to be a waste of your time and your money. But she did. You see, isn't it better that we have these drugs that at least have been in the trial? We know that they're not...we're avoiding the snake oil that some people are saying this is going to open up. That's part of the whole purpose of the right to try. These drugs have got to have had...after they get done with Phase 1, we don't know whether they're going to be completely effective on treating that but we know it's not snake oil, basically, and that...well, that's not true either, because we know that they're safer than that. But... [LB117]

PRESIDENT FOLEY: Senator Hilkemann, your time has expired but you're next in the queue. You may continue. [LB117]

SENATOR HILKEMANN: Oh, thank you. Thank you. Well, let me continue on with that story with Chris (phonetic) then. She was desperate. People who get ALS are desperate. What if we

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found that there was, as the one doctor that I mentioned earlier who had gone to Israel to try to help out, to try to find some relief or help with his ALS, what if that did become available? It didn't work for him. Medical breakthroughs happen all the time and it takes time to get through that process. This is a connective process. Physicians, we don't practice in a bubble. We don't stay just in Omaha, Nebraska. We go to conferences and we hear people from Europe, we hear people from South America, we hear different lectures on what they're doing. That's the nature of the medical practice. And so, folks, what this right-to-try is, is simply...speaking nothing more...the language, I've tried to go through, you know, why is that language in there for it? It's to protect the physicians so that they aren't liable if it doesn't work. Because people are, if they try something they think, oh, yeah, if I try it, it would...no, it protects the physician saying...and do they know all the possible side effects of every drug? I'll guarantee you that every physician does not know the side effects of every drug that they prescribe. I would have, once in a while, I would have a drug that I prescribed for years to many patients, then all of a sudden I'd have a patient come in and say, you know, it did this to me. What? We don't know every side effect. You know, I'm actually the world's worst person as a physician. I just don't take medicines. I don't like it because every medicine you take has got a list of side effects a mile long. But if I got desperate and I had to have it, I would do it. If you listen to any of the medical ads that they have on the...I kind of joke with some of my people in the pharmaceutical industry. You know, for about 15 seconds they tell you the benefit of it and then for 45 seconds they tell you why you shouldn't take it. That's the nature of drugs. Let's not make this into a...and I appreciate if there were some real...I haven't heard any one concern here today that should keep us from moving this bill forward. And if there are some concerns and we can address it, I'll address it between General and Select if we can do that. But let's move this bill forward. It's important legislation. Who knows? You just might be, or your family member, just might be the one person that says, you know, John, there's nothing more we can do for you, but I am aware of a medicine that's in the trial stages; we'll see if the company will pay for it. A lot of times these companies, they don't have to pay for it but many of these companies will continue to pay for that drug and their continuum in the trial. They don't have to. We didn't force them in this bill purposely, because if the company says they don't want to pay for it, they won't. But you know what? They're looking for people to try these drugs as well because they want to... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR HILKEMANN: ...get it through the FDA process. They want to get it out into the market so it's freely used all the time. But, John, here's an opportunity; you can try this. We've tried to cut down the liability of the drug companies. We've tried to cut the liability down to the doctors. It depends upon the patient. And John says, you know, I'd like to give it a try. And so the doctor arranges for them to try the drug or the method theory that they have. That's what this is about. If it works for that John, it's fantastic. Wonderful. If it doesn't, John and his family can know that they tried everything possible... [LB117]

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PRESIDENT FOLEY: Time, Senator. [LB117]

SENATOR HILKEMANN: ...to extend their life. Thank you, Mr. Speaker. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. Senator Kuehn, you're recognized to close on your bracket motion. [LB117]

SENATOR KUEHN: Thank you, Mr. President and members of the body. I do appreciate your attention to this discussion today. There's been some kind of things thrown around and I want to be clear, as I close on my bracket motion, of a couple of items. One, the constitutional issue is not a lever by which to throw mud on the bill. It's a legitimate concern. It's not a legitimate concern that is raised only with me but one that has been raised by a significant opposition on the national scale to the right-to-try legislation and this type of boilerplate legislation which has been moved through multiple states. The other is, you'll note I have not brought anything regarding medical cannabis or any of those other kind of rabbit holes here. I've brought to you a series of legitimate concerns which are nationally recognized, which have been expressed by patient advocacy groups, patient healthcare groups, and public health groups across the nation. One of the challenges is everyone has the same sentiment that Senator Schumacher started with, which is in principle it sounds noble. When we get into the details of this bill, the bill has significant problems on both its writing and composition as well as what we are asking for. I'm going to go through a few of those issues here that I want to make sure everyone is clear on before we take a vote on this bracket motion and move forward. One other issue I just want to address is the issue of whether or not this is a part of the Republican Party platform or was in the State of the Union Address. And I guess I'm going to quote Gone With the Wind without the expletive, but I really don't give a. That is of zero concern to me as to whether or not this is included in a party platform. Right is right and wrong is wrong. Ethics are ethics. And I can tell you exclusively, over three years of using this very bill, because this is the same language put forth by the Goldwater Institute, and sitting down with college students going into healthcare professions, it takes about two class sessions of work in ethics with them before they universally, in three years' worth, arrive at the conclusion that this is unethical in almost every tenet of medical practice, which is why so many medical groups and patient advocacy groups have taken a stand nationally opposing this concept. Because when you sit down, when you read the bill, when you read and understand what this legislation does, it creates so much smoke and mirrors and does nothing for patients. So I'm going to issue a challenge to Senator Hilkemann and those who are supporting his bill, if you vote no on this bracket motion and advance this to General File, I want you to come back...or advance it to Select File, I want you to come back with some facts. I want you to provide me the names of two drug companies in any of the 38 states who have made a single drug available for right-to-try. You won't find them because no drug company is going to take a drug in Phase 1 clinical trials and put it into an unregulated scenario, because if a patient dies or has a bad consequence, that potentially torpedoes their entire process of moving it through

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clinical trials. So find some examples of where drug companies have actually made this available. You won't find them. Second, I want you to find specific patients and not the 100 patients from one doctor in Texas who are using a drug which is available--the oft held up example. You won't find them. In fact, one of the things that is the most disturbing about this is an action of our own Vice President. When Mike Pence was Governor of Indiana, he trotted out a young boy by the name of Jacob, who has Duchenne muscular dystrophy, and used him as an example of right-to-try legislation. There is no Phase 1 clinical drug trial product available to treat his condition. He trotted him out again on the national stage... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR KUEHN: ...and he played upon the heartstrings of people in a false proposal. This bill, as identified by a number of our colleagues with experience and training in the law, presents significant legal complications. I've outlined a number of the ethical complications. If Senator Hilkemann wishes to try again with something that actually makes sense, do so, but I encourage this body to vote green on the bracket motion and move forward with additional legislation and put this poorly written legislation that does...has no place in Nebraska statute behind us today. With that, I would like to ask for a call of the house and a roll call vote in regular order. [LB117]

PRESIDENT FOLEY: Thank you, Senator Kuehn. There's been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please. [LB117]

ASSISTANT CLERK: 18 ayes, 0 nays to go under call, Mr. President. [LB117]

PRESIDENT FOLEY: The house is under call. Senators, please return to your desks, check in. The house is under call. Senators, please return to the floor. The house is under call. Senator Vargas, if you could check in, please. Senator Bolz, please return to the Chamber. The house is under call. All unexcused members are now present. The question before the body is the adoption of the bracket motion. There's been a request for a roll call vote in regular order. Mr. Clerk. [LB117]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 826-827.) Vote is 11 ayes, 30 nays, Mr. President, on the motion to bracket. [LB117]

PRESIDENT FOLEY: The bracket motion is not adopted. We're still under call. Senator Riepe, you're recognized to close on the committee amendments. He waives closing. The question

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before the body is the adoption of the committee amendments, AM46. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB117]

ASSISTANT CLERK: 29 ayes, 9 nays on the adoption of committee amendments. [LB117]

PRESIDENT FOLEY: Committee amendments are adopted. I raise the call. Continuing debate on LB117, Senator Chambers. [LB117]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I think it was a very good discussion that was had this morning. There was a lot of emotionalism. I listened to the arguments that were given. And those who favor the bill are not giving, in my opinion, what are valid reasons for a Legislature to act. Maybe they're good reasons to show why there should be some additional means by which medication can be obtained, but I'd venture to say that I would not get 30 votes in favor of a bill to allow people to die with dignity who chose to do so and if they had a physician who was willing to assist. But this is one of those that is desired by people in the pharmaceutical industry who want to carry out tests without having to pay for them and without liability and without having to meet certain standards. I'm looking at this from the standpoint of a lawmaker now. I would have supported medical marijuana because there are actual documented cases where people were benefited. There were people who came before the Judiciary Committee: veterans, private citizens, parents who had had experience with the use of that substance. Ironically, it is the pharmaceutical industry which is opposed to the legalization or the authorization of the use of medical marijuana because there is so much money being made by the pharmaceutical industry providing what amount to quack medicines to desperate parents and others trying to find a way to get some relief from the problems they or their children are suffering. So when there is something that has been shown to work and the pharmaceutical industry says no, then the legislators say no. When the pharmaceutical industry brings something that can be very detrimental to the public, then the legislators say yes. There has been tugging at people's heartstrings, and I can understand that. But as a Legislature, we're dealing with passing a law that is going to exempt from liability or even the meeting of standards by the people who are putting these quack medicines out here. If you watch national news, you'll see where there are two doctors who were charged--I don't know if they've been convicted yet--of a scam with a weight loss program they had. They have great credentials. You'd think that since they put up huge billboards this stuff that they were pushing would obviously work or they wouldn't do that. Well, con men don't worry about things like that. And I think this, not Senator Hilke, I think this is a con man's bill. These drug industries don't want to have to meet standards. They want to undermine the FDA and there are people in the President's administration who would go for the same thing. And he was going to put a guy in as his drug czar who had all kind of baggage, as I say so much his name should have been Samsonite. And when the public caught on, articles were written, his name was withdrawn or he withdrew it himself. The FDA has rules and regulations. I have not always agreed with everything they've done, just as there is no agency

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with which I've agreed on everything. But in this case, where you're just going to wholesale leave the public open... [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR CHAMBERS: ...to these shysters I think is a mistake. Now they had 30 votes. I don't know whether they would have 33 to cut off debate. I didn't say anything on the bill because I thought that people would listen to what was said, especially when it comes to the constitutionality and unconstitutionality. This is why some people with knowledge won't waste the time like I do trying to explain things to people who know nothing about the law. They disregard it. They think because they have a great amount of emotional investment that it's going to make everything come out all right. If the bill is challenged and is struck down, what are you going to say then? You're going to condemn the court? You're going to say the system of laws is skewed because it didn't give you what you wanted this time, although it may have on other occasions? I see, Mr. President. Thank you. I'll stop at this point. [LB117]

PRESIDENT FOLEY: Thank you, Senator Chambers. Is there any further discussion on LB117? Senator Chambers. [LB117]

SENATOR CHAMBERS: I have one other comment to make. Were this one of those bills that I was willing to go all out to stop, I would make them get 33 votes. But there are others who have less will. And I'll tell you why I'm not extremely troubled. I don't think the thing will withstand constitutional muster. But I hate to see trash legislation passed, and that's what this is. And when the vote is taken, I want a roll call vote and I will ask for a call of the house so that everybody will be on record. And I'm going to make use of that vote. People are not concerned about the process by which legislation may be reviewed by courts. It makes me a difference. There's one bill that was enacted into law when Senator Lathrop was here and it created some special categories of people who would be protected, if you want to call it that, in a way that ordinary citizens are not. I have not liked those kind of bills. Senator Lathrop, because it was at the tail end of the session, had to put it on what they call a Christmas tree bill. Now it may not mean anything to the people on the floor of the Legislature, but a piece of legislation can contain only one subject. When it contains more than one subject it is struck down as unconstitutional. So I knew in my mind, based on my understanding of the law, that that bill to which Senator Lathrop attached his contained more than one subject, not just his making it more than one subject but several. People were desperate to get something enacted. They put a lot of baubles on the Christmas tree. But since Senator McDonnell has brought another such bill, I've done my research; I've got it in a folder. And you seek a declaratory judgment and you seek to have that, whatever it is, bill that you're concerned about declared unconstitutional. I have succeeded in at least one case that is high profile, but it wasn't because of more than one subject. It was because

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what was being attempted was, on its face, unconstitutional. This bill is going to get votes from people who I think have disregarded all of the arguments that have been given. But since those who really have that strong feeling are not prepared to fight it to the end, I'm not going to go to the end on every bill that I disagree with. But the bills that I do disagree with, I will do that and I will do it alone. And when such a bill comes up, I'm going to demonstrate it. And if some of these bills wind up on Final Reading, I've shown you that I know how to put a motion on every bill that's on the agenda. I may have to do that again before we get to Final Reading. How much time do I have, Mr. President? [LB117]

PRESIDENT FOLEY: 1:30. [LB117]

SENATOR CHAMBERS: Thank you. And I have one more time to speak if I choose, right? Then I'll put my light on and stop for this time. [LB117]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Friesen. [LB117]

SENATOR FRIESEN: Thank you, Mr. Lieutenant Governor. I've not weighed in on this bill yet. I've been listening when I could, but I've had to be off the floor for a little bit. When I looked at this bill earlier, I saw a need for it. I could have possibly supported it. But when you bypass all the different protections we have in place, it raised too many questions that I can't support it. And I think too many times on this floor we've taken emotional issues and we vote on emotions rather than on facts. And I have seen cases where I wished someone could have used experimental drugs and tried them. They would have welcomed the opportunity. But when you look at the process we have in place, once we open that door I think it causes more troubles than it causes for good. So I will stand in opposition to this bill. I am not going to take the time to filibuster it either. But I think too many times we've based our decisions on emotion and not on basis of law. Thank you, Mr. Lieutenant Governor. [LB117]

PRESIDENT FOLEY: Thank you, Senator Friesen. Senator Chambers, you're recognized for your third opportunity. [LB117]

SENATOR CHAMBERS: Thank you. Mr. President, this is my third time speaking. I won't offer a motion. I'm not going to do everybody's work every day on every bill. It's not that I'm unable to do it. You all didn't pay attention but I wrote a better rhyme in about 20 minutes than I think some of you all could write in 20 days about what Senator Murante and some guy whose name is Royal had said in behalf of the NRA. That Royal is a royal fool, in my opinion. I think he's run for offices before. He works in his daddy's business, just like the present Governor worked in his daddy's business. And his daddy got him off into politics because he was hurting the business. And he ran him over here and said, run for Governor and I'll give you all the money you need,

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Sonny. And that's what he did. And you see what you got. He shows up all these wing nut meetings at the national level and says his opinion is the opinion of everybody in Nebraska. Well, in the days to come I'm going to show you how much time I can take and will take. I'm working on a rhyme right now in my head that has to do with the intermingling of the fate of my black-tailed prairie dog bill and the remainder of the legislative session. They are intermingling. And the metaphor I'm going to use is that of rivers and it's going to show how the largest rivers have very small beginnings, but then they grow and they grow as they go and they go. And you have the father of waters, you have the king of waters, all of those, but they have small beginnings. My irritation will become indignation, then ire, then anger, then wrath. And that's when we'll see if the river can wash away everything that's left in the session. It's not happening right this minute, but it will happen. The day that I had a motion on every one of those bills I saw the nerves that people were beginning to give into, but I tried to spare everybody by making it clear I did not intend to kill a bill. Some of you all think I can't kill a bill. Yeah, I've gone for 30-some-odd days, however many, but you think that now we're in the tail end of the session I'm probably out of gas. But see, in track, when people run long distances they pace themselves. Then when they get in the home stretch it's called giving a kick. You run faster at the end maybe than you did at any other point in the race. And you also break people's will when they are tired and you show that you're not. Then they give up. I won't give up. There's no give up in me. There's no quit in me. And had I been of a mind on this bill to make sure that it didn't go across the board, it would not go across the board, or if it did you'd have to go to cloture. And naturally, if you went to cloture on a bill that I didn't like, there would be some spillover on bills that followed it. You can think I'm bluffing if you want to and all I want is somebody to stand on this floor and say, Chambers, you're 80 years old, you're full of it, you can't do it. I want somebody to say it. Maybe I should say it loud enough so it will echo and re-echo from these walls. Then I can pretend that I think somebody else has said it. But unfortunately, I recognize my own voice so it would be me. But I'm seeing what this body is made of. You don't owe anything to Senator Hilkemann. You don't owe anything to the pharmaceutical industry. [LB117]

PRESIDENT FOLEY: One minute. [LB117]

SENATOR CHAMBERS: You owe something to that oath you took to do this job to the best of your ability. That's in the oath you took. And you all probably swore. I affirmed it. I don't have to swear. Nobody has to promise me heaven or threaten me with hell to make me do what I believe I ought to do. And the promise of heaven or the threat of hell will not keep me from doing what I think I ought to do. And I have an obligation to discharge my duty to the best of my ability as I understand it, but that doesn't include doing the work of everybody. And there are enough people on the floor who spoke against that bill to continue speaking and stop it from moving. But if you lack the will, then that's the way it will go on this bill. That was a brief rhyme. That was a brief couplet. How much time do I have, Mr. President? [LB117]

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PRESIDENT FOLEY: Five seconds. [LB117]

SENATOR CHAMBERS: Well, being collegial, I will stop now. (Laugh) [LB117]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Wishart. [LB117]

SENATOR WISHART: Question. [LB117]

PRESIDENT FOLEY: That will not be necessary. There's no one in the queue. Senator Hilkemann, you're recognized to close on LB117. [LB117]

SENATOR HILKEMANN: Thank you, Mr. President. And thank you for this debate this morning. It's been an interesting debate. It took me, as I said earlier, took me a little bit by surprise. I thought I had visited with all of you enough that we had a better understanding of this. You know, we talk about the states, we talk about the feds. Thirty-eight states have passed this. The feds, they can't seem to get their act together because it's been something they've done there. So the states are leading the way, and let's be a leader and let's lead the way on this. I'd be happy to work between General and Select File with Senator Kuehn on the issues, some of the issues that he's raised. He's raised some valid points, some things that I haven't...that, frankly, we will certainly investigate further. Maybe I can talk with the Attorney General and get the Opinion there, Senator Hilgers, to see about the constitutionality of this bill. I think the debate we've had, and we've had the vote here earlier, this bill has had bipartisan support in every state legislature that it's gone through. I would ask that today we advance LB117 from General File to Select. I will be happy to work with those parties that have concerns with this bill. We'll have further debate, I'm sure, on Select File on it. But Senator Kuehn asked for some specific information. We'll have that available for you. And so with that, I would close and ask a green vote on LB117. I would ask that we have a call of the house, roll call vote, regular order. [LB117]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. There's been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please. [LB117]

ASSISTANT CLERK: 28 ayes, 3 nays to go under call, Mr. President. [LB117]

PRESIDENT FOLEY: The house is under call. Senators, please return to your desks, check in. The house is under call. Senator Hilgers, could you check in? Senator Linehan, could you check in? Senator Clements, could you check in? Senator Bolz, if you could return to the Chamber, the

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house is under call. All unexcused members are now present. The question before the body is the advance of LB117 to E&R Initial. There's been a request for a roll call vote. Mr. Clerk. [LB117]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 827.) Vote is 33 ayes, 12 nays, Mr. President, on the motion to advance. [LB117]

PRESIDENT FOLEY: LB117 advances. I raise the call. Items for the record, please? [LB117]

ASSISTANT CLERK: Mr. President, I have two reports from the Government, Military and Veterans Affairs Committee on certain gubernatorial appointments, and an explanation of vote from Senator Wayne (re: LB78, LB285, LB345, LB472, LB480, LB486, LB618, LB710, LB744, LB757, LB310, LB275, and LB758). That's all I have at this time. (Legislative Journal page 828.) [LB78 LB285 LB345 LB472 LB480 LB486 LB618 LB710 LB744 LB757 LB310 LB275 LB758]

PRESIDENT FOLEY: Proceed to the next bill, please.

ASSISTANT CLERK: Mr. President, LB596, introduced by Senator Groene. (Read title.) The bill was introduced on January 18 of last year. It was referred to the Health and Human Services Committee. The committee reported the bill to General File with committee amendments. (AM621, Legislative Journal page 971, First Session, 2017.) [LB596]

PRESIDENT FOLEY: Senator Groene, you're recognized to open on LB596. [LB596]

SENATOR GROENE: Thank you, Mr. President. First, I wish to thank the Speaker, Speaker Scheer, for giving LB596 a priority designation and for understanding the urgency of this legislation and the importance it has to the agriculture economy as it applies to Nebraska equine industry. Just prior to bill drop-off last year, I received a phone call from a very nice lady from Arnold, Nebraska, Karen Hough. She explained to me her predicament. She wished to start a business as an equine masseuse in Nebraska. In 2012 she had gone to a training session for a...from a federally certified school from Wyoming that gave the training at a location in Chadron, Nebraska. She received the certificate from the school. When she contacted Health and Human Services Department about a license to practice, instead of a license in the mail she received a cease-and-desist order with a threat of a \$25,000 fine to rub a horse. Finally, Karen gave me a reason to be a state senator. I finally found an overwhelming, worthy purpose for legislation--that one bill we get passed that we all are remembered for. I could actually help someone. After investigating the present statutes, we discovered that under present regulations governing veterinary medicine since the passage of LB463 in 2009, which dealt with veterinary

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technicians, there has not been one individual who has yet qualified to be given a license. Therefore, we hastily presented a bill which was heard by the HHS Committee last year. They voted it out of committee. It's been on General File. Since that time we have heard from many individuals who, due to Nebraska's burdensome regulations and licensure requirements, have been denied the dream to start their own business and pursue an occupation they love. At present, you cannot hire someone in the state of Nebraska to rub your horse unless you first have a letter of referral from a veterinarian that includes a medical diagnosis. Then you have to find an (inaudible)...an animal massage therapist. It doesn't exist in Nebraska. I have some handouts I gave you. The first one was from the state Department of Agriculture, with the help of Economic Development, about the horse...Nebraska horse equine industry and all of the events and different types that...and the effect it has on the state of Nebraska, \$700 million industry. And I also have a handout, the second page of it, that shows horses in Nebraska. In Lincoln County we're number 3 in horses out of 93 counties. We are cowboys. We actually use horses for a purpose: chase cows and rodeoing and whatever else. But what I found discouraging was on the national numbers, if I can find them here, that we don't fair very well. Horses don't want to retire and live in Nebraska, which I happen to believe is because of the lack of healthcare available. Michigan has 230...this is the latest we could find, numbers in 2005. Nebraska had 151,000 horses. Iowa is outdoing us. More horses want to live in Iowa, 199,000. Kansas has 178,000; Illinois, 192,000; Wisconsin, 178. Horses don't want to live here. It's an industry. They eat a lot of oats. They do a lot of business with veterinarians, but they can't find a masseuse in the state of Nebraska. This is serious. It's affecting our ag economy. Right now to be a horse masseuse in the state of Nebraska, you have to have 100 hours of instruction and coursework pertaining to animals in the following areas: anatomy and physiology, pharmacology--pharmacist, study of gait and movement, massage therapy techniques, handling skills, restraint and behavior, at least 50 hours in in-class massage therapy clinic, supervised by licensed veterinarians or licensed animal massage therapists. There's no school in the state of Nebraska you could go get those 50 hours in. It's not offered. It's not offered at vet schools, but those are requirements in the state of Nebraska. Now you understand why nobody has a license to be a masseuse in Nebraska, an equine masseuse. It's time we fix this error. It's time we give this stimulus to the economy. Since Karen contacted me, I have at least four other ladies in Lincoln County who want to start a business. It's not a lucrative business. You hang around the rodeo, along with the chiropractor, and you fix horses. When you watch the Olympics or a race, you see high-end humans running, and before the finals they're getting a rubdown from their trainers. Horses have muscles too. I will address more of the bill itself because, as I said earlier, we hastily put this bill together and we just exempted equine massage from the Uniform Credentialing Act. But after discussing things and my staff used the term we shouldn't have, "high-performance horses," which I'm not sure what that means, but we need to fix it. And we have a committee amendment which Senator Riepe will talk about, and then I have an amendment which I'll address some of the other issues involved with this crisis we have of lack of healthcare for horses. Thank you. [LB596]

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PRESIDENT FOLEY: Thank you, Senator Groene. As the Clerk indicated, there are amendments from the Health and Human Services Committee. Senator Riepe, you're recognized to open on the committee amendments. [LB596]

SENATOR RIEPE: Thank you, Mr. President, colleagues, and Nebraskans. AM621 is a simple amendment. AM621 strikes "high-performance"... [LB596]

PRESIDENT FOLEY: Excuse me, Senator. May we please come to order? [LB596]

SENATOR RIEPE: Thank you. [LB596]

PRESIDENT FOLEY: Senator Riepe. [LB596]

SENATOR RIEPE: Thank you. AM621 is a simple amendment. AM621 strikes "high-performance." This change in language is to allow all horses to receive massages, not just those believed to be high-performance. As a former owner of low-performance horses, I ask you for your support on this committee amendment, AM621. Thank you, Mr. President. [LB596]

PRESIDENT FOLEY: Thank you, Senator Riepe. Mr. Clerk. [LB596]

ASSISTANT CLERK: Mr. President, amendments to be printed to LB596 as well as a motion to LB596. Name adds: Senator Pansing Brooks to LB747; Senator Linehan to LB1040 and to LR6. (Legislative Journal pages 828-829.) [LB596 LB747 LB1040 LR6]

And finally, a priority motion: Senator Lowe would move to adjourn until Tuesday, March 6, at 9:00 a.m.

PRESIDENT FOLEY: Members, you heard the motion to adjourn. Those in favor say aye. Those opposed say nay. We are adjourned.