

January 19, 1981

LR 6  
LB 311-356

read some bills in now, we will recess until 3:30 and come back and hopefully there will be more bills to process and then I would like to have a meeting with the chairmen in Room 1520 at 9:00 tomorrow morning. The Clerk now will....Senator Carsten.

SENATOR CARSTEN: Mr. President, I am hopeful to have a meeting of the Revenue Committee at 3:00. We may be a little late getting back in Exec Session, so I just wanted to alert you of that.

SPEAKER MARVEL: Okay. Senator Carsten is calling a meeting of the Revenue Committee for three o'clock this afternoon. In which room? 1520. Okay, Mr. Clerk, go ahead.

CLERK: Mr. President, first of all, Senator Marsh has an explanation of vote to be inserted in the Journal. (See page 244 of the Legislative Journal.)

New bills, Mr. President. Read by title LB 311-355 as found on pages 244 through 255 of the Legislative Journal.

Mr. President, new resolution. (Read LR 6 as found on pages 255 and 256 of the Legislative Journal.)

Mr. President, Senator DeCamp asks unanimous consent to have the names of all the members added as co-introducers to LR 6.

SPEAKER MARVEL: Okay, the motion before the House is the unanimous consent request that all names be added to the resolution which was just read. Is there objection to that motion? If not, the motion is so ordered.

CLERK: Mr. President, pursuant to our rules....

SPEAKER MARVEL: It will be in the Journal?

CLERK: Yes, sir, it will be taken up some time later.

Mr. President, LB 356. (Read title to LB 356 as found on pages 256 and 257 of the Legislative Journal.)

SPEAKER MARVEL: Okay, the motion by Senator Marsh to recess until 3:30 p.m. All those in favor of that motion say aye. Opposed no. We are recessed until 3:30 this afternoon.

Edited by:

  
Marilyn Zark

February 27, 1981

LB 23, 32, 87, 90, 99,  
111, 128, 166, 175, 180,  
215, 283, 347, 413, 437,  
465, 483

Senator Hefner reports 483 to General File.

Your committee on Ag whose Chairman is Senator Schmit reports 283 be advanced to General File with amendments.

Your committee on Judiciary whose Chairman is Senator Nichol reports 413 to General File with amendments; 32 General File with amendments; 215 General File with amendments; 180 General File; 347 General File with amendments; 111 General File with amendment; 465 General File; 99 General File with amendments; 87 General File with amendments; 23 Indefinitely postponed; 90 Indefinitely postponed; 166 Indefinitely postponed; 175 Indefinitely postponed. (Signed) Senator Nichol, Chair.

Your committee on Urban Affairs whose Chairman is Senator Landis reports 437 to General File with amendments. (Signed) Senator Landis.

Mr. President, LB 128 was introduced by Senator Myron Rumery. (Read title.) The bill was read on January 13 and referred to Retirement for public hearing. It was advanced to General File. I have no amendments on the bill, Mr. President.

SPEAKER MARVEL: Senator Rumery, do you wish to explain the bill?

SENATOR RUMERY: Mr. President, members of the Legislature, if I could have your attention for a few minutes, I would appreciate it. We introduced this bill for these reasons, that should a member of the school employee's retirement system die before retirement, LB 128 would provide an option for the payment of benefits to the spouse of the member, if the spouse is the sole surviving beneficiary. Presently the law provides that if a teacher has twenty years service and is at least 55 years of age or thirty years of service regardless of age and dies before retirement, a monthly annuity for life would be paid the spouse if the spouse is the sole surviving beneficiary in an amount equal to the joint and survivor benefit that would have been paid if the deceased member had retired on the date of death. The joint and survivor benefit is a greatly reduced benefit. The amount of the reduction is determined by the age of the deceased member and the age of the spouse. There are times when the surviving spouse would prefer to have a lump sum benefit rather than a meager monthly payment for life. Often a surviving spouse of a deceased member needs funds for retraining or to enter another job market or to invest in a business that may have some opportunity. LB 128 would give a spouse who is the sole surviving beneficiary

SPEAKER MARVEL: Senator Chronister, do you wish to close?

SENATOR CHRONISTER: Yes, Mr. Speaker and members of the body, I think the issues to keep in mind regarding LB 215 is to remember that no change was made in the substantive law of the termination of parental rights. The bill only corrects a deficiency in Section 42-364. It would put parents on notice about conduct which could subject them to termination of parental rights. Section 42-364 is part of the divorce statutes. The inserted language is taken from Section 43-209 which is part of the juvenile court statutes. Section 43-209 has withstood a constitutional challenge in Nebraska similar to the one which overturned Section 42-364. I urge advancement of the bill. Thank you.

SPEAKER MARVEL: The motion is to advance the bill as explained by Senator Chronister. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 29 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: Motion is carried. The bill is advanced. The next bill is LB 180.

CLERK: Mr. President, LB 180 introduced by Senator Landis and DeCamp and Fowler. (Read title). The bill was first read, Mr. President, on January 14 of last year. It was referred to the Judiciary Committee for public hearing. The bill was advanced to General File.

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: Yes, Senator DeCamp was planning to handle this bill, and since he is not here, why don't we I guess move on because he wanted to handle it.

SPEAKER MARVEL: Okay, do you want to move on?

SENATOR FOWLER: Yes, the same for the A bill, too, until Senator DeCamp gets back.

SPEAKER MARVEL: Okay, any objection. If not, so ordered. We will go to LB 347.

CLERK: Mr. President, LB 347 (Read title). The bill was first read on January 19 of this year. The bill was referred to the Judiciary Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee

January 7, 1982

LB 347

amendments pending by the Judiciary Committee.

SPEAKER MARVEL: Senator Nichol, do you wish to discuss the amendments to LB 347?

SENATOR NICHOL: Mr. Speaker, members of the Legislature, this one we could probably go on the rest of the afternoon but I will try to make it brief as possible. First of all, as far as the committee amendments are concerned, the Judiciary Committee adopted two substantive amendments to 347. The first amendment clarifies some of the language found on page 7 contained in 28-309 (c). This provision deals with assaults in correctional institution. First of all, we remove the outdated language: "Nebraska Penal and Correctional Complex" and insert the "Department of Correctional Services". Secondly, we struck the words "unlawfully assaults or threatens another in a menacing manner" as we felt the remaining language in line 19, "unlawfully strikes or wounds another" was more specific and did not lend itself to more than one interpretation. Also I have an amendment following the committee amendments which clarifies the language in line 17 on page 8 to bring the municipal jails under this provision but I intend to do that on Select File instead of here. While the counties have taken over most municipal jails throughout the state, there are still some city facilities, notably Lincoln, which should be brought under this act. The second amendment the committee adopted to LB 347 is to strike all of Section 9 in the bill. This section originally provided that the value of property taken as a result of multiple thefts could be aggregated for the purpose of prosecution. Now after public hearings the committee felt that this section could lend itself to entrapment of employees and might be the subject of abuse. For this reason the committee amendment struck original Section 9 from the bill. The other two amendments are simply clarifying internal references. I move for the adoption of the committee amendments.

SPEAKER MARVEL: The motion is the adoption of the committee amendments to LB 347. All those in favor of the adoption of those amendments vote aye, opposed vote no. Record the vote. Have you all voted? It takes 25 votes. Record the vote.

CLERK: 25 ayes, 0 nays on adoption of committee amendments, Mr. President.

SPEAKER MARVEL: Committee amendments are adopted. Senator Nichol, do you wish to explain the bill?

SENATOR NICHOL: Yes, Mr. Speaker, every year rather than



introducing nine or ten bills to modify various provisions of the Criminal Code, the Judiciary Committee introduces one bill and uses it as a vehicle to make these modifications. During the interim period we received suggestions for modifications from the County Attorneys Association, Law Enforcement agencies and others. This year the Judiciary Committee bill for Criminal Code modification is 347. I would like to work through the bill section by section and then if you have any comments, suggestions on a specific section, please feel free to ask. As you know, with the enactment of the Comprehensive Criminal Code in 1977 we attempted to change every criminal penalty on the books at that time to conform with one of the six listed felony classifications or six listed misdemeanor classifications. As you also are aware, there are criminal penalties found throughout the statutes and not just in Chapter 28. Every once in awhile we run across some of these provisions which have not been picked up by the computer for one reason or another and consequently have not yet been harmonized with the Criminal Code provisions. The first six sections of LB 347 deal with the six penalty classifications found in Chapter 18 which have not yet been harmonized. When we harmonize these provisions, we take the penalty classification in the Criminal Code which most nearly conforms with present law. So this is what the first six sections of LB 347 are about. Section 7 of LB 347 found on page 7 provides for a specific felony offense of assault while in legal custody or confinement. We have received a great deal of testimony from correctional officials and jailers that it is most difficult to get adequate investigation and prosecution for assaults between inmates or between inmates and guards in the correctional setting. Correctional officials say that a felony classification for this type of assault is necessary for maintaining institutional control. What Section 7 does is to make assaults a Class IV felony. Section 8 of LB 347 was suggested to the committee by the County Attorneys Association. Prior to the enactment of the Comprehensive Criminal Code we had a separate felony provision on the books regarding breaking and entering an automobile or other mode of transportation. This provision was left out of the criminal code as it was thought at that time such crimes could be prosecuted successfully under other existing criminal classifications. Prosecutors inform us that with the rash of stereo and citizens band radio thefts from automobiles, vans and other means of transportation that it would be most helpful to them if we placed this specific penalty classification back on the books. This provision would also be helpful in prosecuting claims for breaking and entering into mobile homes. The law right now governing breaking and entering into houses or buildings does not quite cover the subject matter. Section 8 of LB 347 would

provide a specific offense for breaking and entering a motor vehicle or other mode of transportation vehicles. Section 9 was struck by the committee amendments. Section 10 provides for an enhancement of penalties for second or subsequent convictions under the petty larceny statute. Under current statutory provisions covering theft, depending on the value of the stolen property involved, the penalty can remain the same whether it is the first conviction or the tenth conviction. This provision was brought to us by the County Attorneys Association which suggested for a second and subsequent convictions for Class I misdemeanor thefts, which is a high classed misdemeanor, the person can be charged with a Class IV felony which is a low grade felony. Subsection (6) of Section 10 provides enhanced penalties for second and subsequent petty theft convictions where the value of the property that is taken is \$100 or less. Subsection (6) would provide that a second conviction would enhance to a Class I misdemeanor rather than a Class II misdemeanor, and for any third or subsequent convictions, it would be a Class IV felony. Section 11 of LB 347 harmonizes the various intent provisions now found in the criminal mischief section. On page 10 of the bill, you will note that the definition of criminal mischief found in sub (a) and sub (1) speak in terms of intentionally or recklessly damaging property. Sub (c) speaks in terms of intently or maliciously causing another to suffer pecuniary loss. When these proposed definitions were placed in the penalty provisions, it makes the intent requirement necessary for malicious mischief provisions consistent throughout. It could be argued that the intent requirement to sustain a conviction is lessened somewhat by the inclusion of a "reckless" standard for felony criminal mischief and for Class II misdemeanor criminal mischief. The Judiciary Committee considered this but concluded that consistency within the criminal mischief statute required this change be made. Section 12 of 347 provides for raising the penalty for child abuse from a Class I misdemeanor to a Class IV felony. This section also provides a second or subsequent conviction for child abuse will be a Class III felony. Section 13 of the bill upgrades the penalty sections for the abuse of an incompetent or disabled person. Like the child abuse penalty, this penalty section is raised from a Class I misdemeanor to a Class IV felony. It also provides for the enhanced penalty clause for second or subsequent convictions for the abuse of an incompetent or disabled person. Mr. Chairman, I move for the advancement of the bill.

SPEAKER MARVEL: The motion is the advancement of the bill. Is there any further discussion? We have got some amendments.

CLERK: Mr. President, the first amendment that I have is from Senator Beutler. Senator Beutler would move to amend the bill

by striking Section 8.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I hope you will haul out LB 347 and turn to Section 8. I appreciate the efforts of the Judiciary Committee to put this altogether into one bill but I think there are several sections of this bill that are harsh, to say the least, dangerously harsh, and besides being harsh are probably, or are in my opinion, unnecessary because there are other provisions in the law that are almost equally harsh that cover the situation. But the first provision that I wanted to address is Section 8 in the bill which basically says that a person breaking or entering into an automobile and breaking or entering includes sticking your hand through the window, you don't really have to break or enter, and if you take something or with the intent to steal that that is a felony offense, fourth class felony offense. A fourth class felony is a maximum of five years imprisonment and a \$10,000 fine. Keep that in mind. This is the penalty for this provision, five years and \$10,000. Okay, let's talk about examples now. Let's say your seventeen year old daughter comes to town one night, Scottsbluff, Kearney, wherever you are, with a group of girls. They are having a good time. They are going down the street and joking. They walk by a car and the window is open and they see laying there on the front seat a little cassette, Dan Fogelberg, whoever, one of their favorites. They get to feeling a little spunk, one of them reaches in and grabs the cassette and off they go, and a policeman sees them, grabs her by the back of the neck and hauls her in and charges her under Section 8 of this bill. Let's say the tape was slightly used. Let's say instead of \$5 or \$6, it was now worth 69¢ according to the appraiser. Under this section that seventeen year old girl would be subject to five years imprisonment and \$10,000 for sticking her hand through the window and stealing a 69¢ tape. I suggest to you that we are on the verge of returning to the Middle Ages, that this is perfectly ridiculous. Not only is it ridiculous, but what makes it even more preposterous is that we have laws covering this situation. It is a criminal trespass in the second degree to stick your hand through the car window. It is criminal mischief to break and enter an automobile, and if it is over \$300 worth of damage, that is a felony, too. It is theft to take the tape, and if you take something that is over \$300 in value that is a felony, too. So all of the things that that girl would be doing are covered by other sections of the law and why in the world we would want to put into the law another provision with a penalty as harsh as this for a

January 7, 1982

LB 347

potentially small offense I don't really know but I think we had better step back and think about this one and strike this section, and if they think there is a real need for something like this, then let them come back with something more narrowly drawn but I just suggest to you it would be a catastrophe to pass something like this because it wouldn't be long before a judge somewhere would sentence somebody for a ridiculous term in the prison for some small offense and he would have every right to do so under Section 8 which we are about to pass. So I would ask you to strike Section 8 completely. Thank you.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Yes, Mr. President. I forgot who introduced this bill. Senator Nichol, would you yield to a question? On page 7, line 17, starting with paragraph (c). It says, "While during confinement or in legal custody in the Nebraska Penal and Correctional Complex, or in the Nebraska Center for Women, or in any county jail, unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another", would you have any objection adding to that "city jail" also?

SENATOR NICHOL: No, I would have no objection to adding that.

SENATOR HIGGINS. We have both in Omaha.

SENATOR CLARK: Is there any further discussion on the amendment by Senator Beutler to strike Section 8 of 347? Senator Beutler, do you wish to close?

SENATOR BEUTLER: I have nothing more to say, Mr. Speaker, thank you.

SENATOR CLARK: The question before the House is the Beutler amendment to strike Section 8 of 347. All those in favor vote aye, opposed vote nay.

ASSISTANT CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted? I am not sure you will have enough here without the Executive Board coming back. Have you all voted? Senator Beutler, I am going to have to call the vote.

SENATOR BEUTLER: Mr. Speaker, I guess I would ask for a Call of the House and a roll call vote.

SENATOR CLARK: All those in favor of a Call of the House vote aye...will you clear the board please...vote aye, and those opposed vote nay. Record the vote.

CLERK: 11 ayes, 1 nay to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All Senators return to their seats. Please check in. Would everyone please check in? This is the last bill we are going to take today. Senator Burrows, Senator Warner, Senator Schmit, Senator Lamb, would everyone check in please? Do you want to accept call in votes, Senator Beutler? Do you want to accept call in votes?

CLERK: Senator Sleck voting yes. Senator Pirsch voting yes. Senator Goll voting yes. Senator Barrett voting yes. Senator Dworak voting no. Senator Warner voting yes. Senator Wagner voting yes.

SENATOR CLARK: The Clerk will record the vote.

CLERK: 25 ayes, 4 nays, Mr. President, on the adoption of the Beutler amendment.

SENATOR CLARK: The Beutler amendment is passed.

CLERK: Mr. President, I now have a second Beutler amendment.

SENATOR CLARK: Read the amendments. The call is raised.

CLERK: Mr. President, the second Beutler amendment would amend the bill: (Read Beutler amendment (2) as found on page 157 of the Legislative Journal.)

SENATOR CLARK: Senator Beutler. Senator Beutler. Well, we are just like an attorney, your time is started.

SENATOR BEUTLER: I am sorry, I didn't hear you, Mr. Speaker. Are we on the second amendment?

SENATOR CLARK: Yes, you are on the second amendment.

SENATOR BEUTLER: Members of the Legislature, if you would indulge me one more time, I would ask you to turn to page 11 of LB 347 to the very top of the page which is Section 28-707 and this section has to do with child abuse and one of the first things I wanted to point out to you is that it includes actions that are done knowingly, intentionally, or negligently, knowingly, intentionally and negligently. And maybe the first thing that I would bring to your attention is that in the

criminal law it is a rare, rare case when we punish somebody criminally for a negligent action. Generally speaking, the law says that when something is done negligently, there is a right to damages, a civil right to damages from one person to another for the damage done, but because it was not intentional or knowingly done, it was not criminal in nature and therefore we do not punish with criminal sanctions. But in this statute, in the first place, and this was done before today, we decided that we were going to take that extra controversial step and punish negligent actions in the case of child abuse. So we are out on a limb already on this statute, and what are some of these negligent actions for which parents might be punished. If they place their child in a situation and endangers his or her life or health, let's say a mother backs a car out of the driveway and accidentally runs over the child. Is that a negligent action that endangered the life or health of the child? Well, it obviously was. And under this statute that mother would be subject to the penalty if it were prosecuted. Second criteria, cruelly confined or cruelly punished, I don't know what those words mean exactly but I can tell you that they are not very well defined in our case law and what "cruelly punished" may be according to the courts remains to be seen. The third criteria of child abuse, derived of necessary food, clothing, shelter or care, again we can get into some very legitimate and serious arguments about what is necessary food, what is necessary clothing, what is necessary shelter and most of all what is necessary care. We are talking about love and affection and now the state has the right to go into the family and determine whether there is sufficient love and affection in the family, not only the right to do that, but then the right to punish criminally if there is not enough love and affection in the family. I am pointing out to you these things because the intent of LB 347 is to make child abuse, including negligent child abuse, a much harsher offense than it has ever been before in this state. We are changing it from a misdemeanor to a felony and, again, we are subjecting a parent to five years in jail and \$10,000 fine, not only for intentional and knowing abuses, but for negligent abuses. Generally speaking, I don't think the criminal law should apply to negligent actions. I certainly don't think a felony offense is appropriate for a negligent action of this type where the action itself could be minor indeed. Does this bill prohibit corporal punishment of children? Can you spank your kid or is that cruelly punishing? So, the last thing before I tell you what my amendment does I would point out to you that the bill says that on second or subsequent convictions under this section, "any person so offending shall be guilty of a Class III felony", and a Class III felony has a maximum of twenty years imprisonment. So a judge could conceivably

sentence someone to jail for two negligent actions, two relatively minor negligent actions, for a period of time longer than most murderers in this state spend in jail. That is the kind of serious statute that we are dealing with here. What my amendment does, and the more I think about it, the more I talk about it, the more I think it doesn't do enough, it makes a distinction between negligent child abuse and child abuse which is knowingly and intentionally done, and with regard to that which is negligent, it simply says that that will continue to be a misdemeanor, and with regard to that which is done knowingly and intentionally, allowing that to be a fourth class felony. That is the best I could do today on reading this provision, and like I say, I think that is a mild amendment at that. So I would ask you to please make a distinction between negligent actions and between intentional and knowing actions at a very minimum. I can't promise you I won't be back on Select File with some much more serious suggestions than just this, but as a minimum this should be done. And secondly, I will also tell you on Select File that I will be back with this same amendment with regard to Section 12 of the bill that has to do with the abuse of incompetent or disabled persons because the same defects that exist with regard to child abuse that I just discussed also exist with regard to the penalties applicable to the abuse of the elderly or the incompetent that I think are likewise inappropriate but I simply haven't had time today to draft that amendment. So I would ask you today to deal with the overly severe penalty provisions in Section 11 of the bill. Thank you.

SENATOR CLARK: Senator Higgins. First I would like to ask the Clerk, are there any more amendments on this bill? What we are going to do is finish this amendment, then we will break off for tonight and take it up tomorrow morning. Senator Higgins.

SENATOR HIGGINS: Mr. Speaker, I would like to ask Senator Beutler about his amendment and how it would affect a situation that I have right now in Omaha with one of my constituents. Presently I have a woman in Omaha who was divorced last summer and she was given custody of her three children and her husband has been given visitation rights twice a week. Every time the children came back from visiting with him, they were filthy dirty, he never changed their clothes even when she provided clean clothes, they were always hungry because he never fed them, and last summer the two year old when the mother took him upstairs to bathe him discovered the lower part of his spine and up and down his back leg, the backs of his legs were black and blue and she took him to Bergan-Mercy Hospital and



they called the police and they took pictures. When they pulled his hair back, the two year old had a big knot on his head so they went to court and the judge told the father you don't get to visit them, these children, for two or three weeks now. That was the father's punishment because I guess he thought that was abusive. Just about two weeks before Christmas, the same thing happened again. The little boy comes home with black and blue marks up and down his legs and at the lower part of his spine and the mother called me and she said, "Senator Higgins, what do I do?" I said, "You take them to Bergan-Mercy and I will call the police and see that they get the pictures taken." She did, the police went out there, and the police said, "Oh, he took them to his girl friend's house in Council Bluffs. We don't have jurisdiction there. You go to Council Bluffs." At ten-thirty at night, she took the child to Council Bluffs. The police officer over there said, "To tell the truth, lady, you are just getting even with your old man, aren't you? Well, we will write it up. We don't know what is going to happen." So she has got a second attorney now. He went to court on this second case. One of the doctors from Bergan-Mercy Hospital came down and testified that he had examined the child, that he did have those black and blue marks, that he did have a bump on his head, and do you know what the judge ruled? He said, "I don't know if this is child abuse or just lack of proper supervision". Well, my question to you is twofold. Number one under your amendment, what is the minimum that a judge could sentence somebody if the judge ever finds him guilty of anything like that? What is the minimum and is your amendment going to address the problem like I have now because I have been to the Child Protective Service. They also have their hands tied because this is in District Court and there is a decree that says the father has the right to visit the children no matter what he does to them when he has got them. Is your amendment going to do anything to help this poor woman because she is on the verge of a nervous breakdown?

SENATOR BEUTLER: Senator Higgins, one can do nothing but sympathize with the situation you are describing but as you are well aware there are different aspects to our criminal law system. The first thing is somebody has got to make an arrest. The police have to be acting their proper role and the county attorney has to be acting his proper role. He has to prosecute the case. Then there is the law and it doesn't matter whether the penalty for child abuse is a \$10 fine or ten years in prison if nobody is making arrests and nobody is prosecuting the law, and we have means hopefully of going after those two institutions. But if you take



drunken driving, for example, and if you look at the figures from your own City of Omaha, it becomes blatantly clear that they simply don't make arrests for drunken driving in Omaha and that probably whatever you do with the penalty will have no affect in Omaha because they don't arrest people for drunken driving and I make that analogy to the child abuse law. If you have people who will not enforce the law, it doesn't matter what the law is, but under the present law and under my amendment, the lady that you are talking about, if they found that it was in fact child abuse, then my amendment makes no changes as far as the standards are concerned for determining child abuse. If they found that there was child abuse and if it was done knowingly and intentionally, which it sounds like it was unless this fellow flies off into violent temporary rages, then in the one event it would be a fourth class felony, up to five years and \$10,000, if they proved it was knowingly and intentionally done, or if they can only prove that it was negligently done or if it was negligently done, then he would be subject to a maximum penalty of a year in prison.

SENATOR HIGGINS: But my question, Senator, is, what is the minimum? Maximum, I don't ever see anybody get that. What is the minimum they get?

SENATOR BEUTLER: Under 347, if you adopted it exactly as proposed by the Judiciary Committee, there would be no minimum. Under my amendment, it is equally true, there would be no minimum.

SENATOR HIGGINS: Then I think I will add an amendment. Thank you, Senator.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I rise in support of Senator Beutler's amendment and I would ask you as members of this body to consider very seriously this bill. The intent of the bill is very laudable and, of course, we all want to correct some of the abuses that we have seen but I think that Senator Beutler is trying to call the attention of this body on a very lazy type of an afternoon to some of the dangers that are inherent in the bill. I would venture to guess that most of us are not really familiar with the bill. We have not discussed it with each other. We have not discussed it with some of our attorney friends in the body and I can see some very, very dire consequences of enactment of this bill without the improvements that Senator Beutler is trying to encourage

us to adopt. And so I would hope we would adopt the Beutler amendment. I would hope you would go home tonight and read the bill because I understand there are several additional amendments that are to be offered and I think the bill is a desirable bill but it certainly is very much in need of amendments, and frankly without the amendments that Senator Beutler has proposed, I would not be able to support the bill. So I am asking you to look at it very carefully and discuss it with those in whom you have confidence in and see if you can't perhaps make some changes in this bill which will make it acceptable. Otherwise I would venture to guess the bill is doomed and for very good reason.

SENATOR CLARK: Senator Newell.

SENATOR NEWELL: Senator Nichol, can I ask you a question. Senator Nichol, I have heard the argument placed many times before the Judiciary Committee and the argument spoken on the floor that if penalties are too stiff then you don't get convictions, that, basically, if it is the judge alone, they take into account the stiffness of the penalty, and if it is a jury, they also take those things into account. And I am concerned about that as it applies to the Beutler amendment and applies to the bill that we are dealing with and I would like to have you just comment on that because that is a concern, something that sticks in my mind, and something that makes me tend to be supportive of the Beutler amendment because I think it is more important to get convictions in the case of child abuse, and it is more important not to have these kinds of cases come before courts if it is not child abuse, and getting to the truth here is one of the things that I wonder if this bill will help us totally do.

SENATOR NICHOL: Yes, thank you for asking the question, and I have used that very argument on this floor that when the fine or the result of the judgment rendered by the judge is too severe, three things don't happen, the arresting officer doesn't arrest, the prosecuting person doesn't prosecute, and the judge doesn't judge, and if any of the three breaks down, you are dead and you don't have anything. The only thing I would say to you, Senator Newell, is that we are not raising the minimum. I think Senator Beutler just stated that there is no minimum. We are raising the maximum to give the judges the authority and they have come to us with this. We haven't solicited this bill from anybody. These have come from judges mostly and the Bar Association saying we need more tool to do it when we need it. So we are submitting to you, if you like what they say, okay. If you don't, it is all right with us, it is not life or

death. But I don't think, Senator Newell, that we are raising the top end...not raising the lower end, they can turn them loose free if they want to. So I don't think that that specific argument applies in this case.

SENATOR NEWELL: Okay, then let me ask you this question. Are we in danger of having substantial reaction, public reaction in the case of child abuse because it is a very difficult issue? It has become very much of a moral issue in recent years. I think we have had a number of groups that have talked about the freedom and total right of parents to deal with their children without any legislative or judicial oversight whatsoever. Is there a danger by providing these kinds of sanctions which basically are much more severe, which as you say the judges have indicated, is there a danger of having that kind of public backlash that will create some doubts about the whole question, of the whole issue of what the state can or should do in regards to child abuse or child correction, whatever that case may be?

SENATOR NICHOL: In my opinion, no, I don't think so. However, when you get into parental rights and child abuse, you are in a hotbed and you are going to get flak either way or probably both ways because those who are taking care of the children and wish to correct them by means that other people think are abusive and they don't think they are, you are in a hotbed and I would like to say to you that this bill would cure a lot of those problems, but I don't think that it will.

SENATOR CLARK: The question before the House is the adoption of the Beutler amendment, second amendment. Do you want to close on it?

SENATOR BEUTLER: Mr. Speaker, I have already discussed the general danger of applying criminal penalties to negligent actions so I don't want to go back over that again but I would point out to you also that one of the major problems we have with the criminal law system is the perceived injustice of a system that results from a judges discretion in sentencing and historically we learn that there needs to be discretion but there also has to be balance to that discretion. Otherwise we end up in a situation where in Scottsbluff for writing a bad check you go to the penitentiary for a few years, and in Omaha for writing a bad check, they slap you on the wrist, they fine you a bit. When those kinds of cases come down so differently in terms of sentencing, it leaves a very bad impression on the public of the criminal justice system, part of which is not justified

because they don't know, the public generally, of the individual circumstances of a particular case but part of which is justified and I am suggesting to you with my amendment that you cut down the maximum penalties applicable to child abuse where the incidence of child abuse can be so minor under the law so that the discretion that the judge has is not so broad. The difference between a minimum penalty of nothing and a year in prison and the difference between a minimum penalty of nothing and five years in prison is an awful lot. It would be an awful lot to a person convicted under that statute. So I ask your support for the amendment. But in a political sense let me remind you of what I think is one of the failings of our democracy from time to time, and it is a failing both on the liberal side and on the conservative side. We seem to get into movements. We seem to gear up to solve our problem. And one of the real problems of our society and one of the things we are really gearing up to correct is the child abuse problem, but each time we do this it seems to me that more often than not we overreact. We overreact and we do more than is necessary or we do some things that are not necessary or we do some things that might be helpful but which have dire side effects. And I think that what is suggested in 347 is such an overreaction and I suggest to you that if you talk through this statute with your constituents and point out that it covers minor negligent actions that they are certainly going to understand that somebody shouldn't be subjected to five years imprisonment and \$10,000 fine for what may be a minor act of negligence, especially within their own family where traditionally the strong American tradition of family has allowed a greater latitude, and really an almost undefined latitude with regard to the behavior of parents toward children. Thank you.

SENATOR CLARK: The question before the House is the adoption of the Beutler amendment, number 2. All those in favor vote aye, opposed vote nay. Have you all voted? Record the vote.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

SENATOR CLARK: The amendment is adopted. Senator Lamb, would you like to adjourn us until nine o'clock tomorrow morning after the Clerk reads some things in?

CLERK: Mr. President, some new bills, LB 698 (Read title); LB 699 (Read title); LB 700 (Read title); LB 701 (Read title).

And finally, Mr. President, I have a reference report referring LB 618 through 692.



January 8, 1982

LB 347

PRESIDENT: Ready then for agenda item #7, back to General File. As I understand it, LB 347 is pending. Mr. Clerk, where are we? Who was presenting what?

CLERK: Mr. President, when we last considered 347....we last considered LB 347 yesterday. It is a bill for an act relating to crimes and punishment. It harmonizes penalty provisions for the Nebraska Criminal Code. Prohibits certain acts, defines the offense of breaking and entering. Provides penalties. Eliminates obsolete offenses relating to street-cars and repeals the original sections. The bill, of course, was referred to the Judiciary Committee for public hearing. It was advanced to the floor for legislative consideration. The committee amendments were adopted yesterday. There were two amendments offered by Senator Beutler that were adopted yesterday as well. Mr. President, I now have pending a third amendment from Senator Beutler. The amendment would read as follows, Mr. President: (Read the Beutler amendment as found on page 166 of the Legislative Journal).

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, just to refresh your memory, the last amendment that I had yesterday had to do with the child abuse section of the bill, and you will recall that that section of the bill included in addition to knowing an intentional abuse negligent abuse, and then listed a number of instances that constituted abuse. The following section of the bill, Section of the bill, Section 12, which is what we will be discussing right now is on page 11 and it has to do with abuse of incompetent or disabled persons. And basically it retains the same kind of structure, that is, there can be knowing or intentional or negligent abuses and the criteria are again basically the same as in the child abuse section of the statute. In other words, they have extremely parallel, in fact, I think identical structures. So, basically, what I am now doing is the same thing that you approved yesterday with the child abuse statute. With regard to abuses that are negligent in nature, my amendment would say that we are not going to increase the penalty to a felony as suggested in the original version of LB 347 but only with regard to those abuses that are knowingly and intentionally done, will the penalty be upped to a felony penalty. So it modifies the harshness of the increased penalty proposed in the original LB 347. I would be happy to answer any questions on it but I don't think there is a need to speak at length to it because it is exactly what we discussed yesterday except making it applicable to Section 12 relating to incompetent persons as well as to Section 11, the child abuse section. Thank you.

January 8, 1982

LB 347

PRESIDENT: Any discussion on the Beutler amendment to LB 347? Senator Beutler, I see no one wishes to discuss it so that will be your opening and closing. The question is the adoption of the Beutler amendment to LB 347. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The motion carries. The amendment is adopted.

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

PRESIDENT: All right. Senator Chambers wishes to discuss the bill now that it is ready for....

SENATOR CHAMBERS: Mr. Chairman, I am going to ask that... I don't have any of those amendment slips with me, but I would like this amendment drafted and the reason I am going to ask that it be written so....and then I will sign it, on page 10 I would like to strike....well, I guess it would start on page 9, I would like to strike all of Section 11. And I will explain why, and I have the amendment drafted. I wanted something to be before us.

PRESIDENT: All right.

SENATOR CHAMBERS: If you will look at this provision, what I am striking is new language that is being added. I am not striking what is currently in the statutes now. And the reason I am striking it, you see the first change of significance other than the "he or she" at line 8 "intentionally"....page 10 of the bill, "or recklessly causes another to suffer pecuniary loss by deception or threat." Mr. Chairman, all of the things that are added to this section can be summed up in that one word "recklessly". They talk about pecuniary damage that you can cause to somebody as a result of recklessness and it is considered criminal mischief. That would include based on the new language we are adding here, any automobile accident. In practically every accident somebody is at fault, somebody has failed to do something they should do or they have done something that they shouldn't do. So I think if you are going to have a criminal statute and make something a crime, you should not give a definition that will include automobile accidents. And remember, if an automobile accident is serious enough, for example, if somebody is drunk and they run over a person, there are motor vehicle homicide statutes to deal with that. But we are not talking about injury, we are talking about money damage. If you go down to line

17, it is a crime if you cause money damage in excess of \$100 as a result of something you do recklessly. So if you bump somebody's car and cause \$102 worth of damage, you have then committed a crime. I don't think it is necessary to load down the criminal statutes with this type of nonsense because it is doubtful that a prosecutor would charge somebody with criminal mischief in an auto accident unless there were a particular person that he or she, as the case might be, did not like. None of these statutes or provisions that I am discussing here that relate to criminal mischief can be shown not to have accomplished what they were designed to do without changing it like this bill does. Remember, we are not talking about bodily injury. There are all types of laws on assault, assault and battery, and what-not to cover that. We are talking strictly about money damage. It should not be a crime as this statute is attempting to make it. And, therefore, I am asking that this provision of law relating to criminal mischief be left the way it exists in the statutes right now. It requires intention or malice, meaning that my aim consciously is to do something to hurt you. Recklessness, although it sounds scary, does not rise to the level of an intentional act, and, therefore, I don't think it should be a crime. If I recklessly damage your property, you can make me respond in money damages for the damage that I have done to you. But I think it is a waste of time and an overburdening of the criminal justice system to add these provisions to the law that you find in Section 11. So if you have any questions, I would be glad to answer them. But my motion, remember, is to strike all of Section 11 and that starts at the bottom of page 9, line 25, and runs through lines 1 through 23 on page 10.

PRESIDENT: The Chair recognizes Senator Higgins.

SENATOR HIGGINS: Thank you, Mr. President. Senator Chambers, would you answer a question?

SENATOR CHAMBERS: Yes.

PRESIDENT: Senator Chambers, will you respond?

SENATOR CHAMBERS: Yes.

SENATOR HIGGINS: You stated that if you damage my property, you will willingly pay for those damages and there doesn't have to be any criminal offense to it, right?

SENATOR CHAMBERS: No, what I am saying is that the laws exist that will force a person to respond in damages.



SENATOR HIGGINS: Okay, thank you. As an insurance agent I don't want to tell you the number of times that I have had people who have paid as much as \$1500 to \$2000 a year for insurance and they get hit by a driver that has no insurance. He is driving a car, he is making \$100 to \$200 payments on the car but he can't afford insurance, and as a consequence the fellow who he hits has to get claim under his insurance company and that insurance company could go back at the fellow that hit him except he doesn't have anything except that car that he is making payments on, so there is a mortgage on it. So he really doesn't have anything to get back at. He has no way to make you pay for the damage you have recklessly done. So I agree with you, Senator Chambers, if you will agree with me if I put in a bill that says nobody can drive an automobile that doesn't have liability insurance or if you will agree with me if I put a bill in that says, you can't sue anybody else for bodily injury or property damage if you yourself don't carry that insurance. Would you be agreeable to that, Senator Chambers?

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Senator Higgins, we don't make the justice system whether we are dealing with the civil side of it or the criminal side dependent on one person having one coverage or another. Now it is one thing to say that you have got to have liability insurance before you can drive an automobile and it is another thing to say you must meet a certain financial or economic set of circumstances before the courts are open to you. There should be no limitation on who can sue and the basis for a suit as long as the courts are open for that particular kind of action. But my point in talking about this provision is that if somebody were charged with a crime, convicted and sentenced to the maximum this allows, part of the sentence is not to pay for the damage that was done. All that you have done is put these people on the criminal side of the system and they either go to jail or pay a fine which the person damaged would never see. And I think if that were done....(interruption).

SENATOR HIGGINS: That's my point, if they won't pay you then you have got no other recourse but to put them in jail. In other words, if people habitually do property damage to others and they refuse to pay them, and they refuse to conduct themselves in a manner that they will not be reckless, what recourse does the public have left other than jail sentence?

PRESIDENT: Senator Higgins, as irritating as that is, the criminal justice system should not punish anybody for anything



January 8, 1982

LB 347

other than intentional actions.

SENATOR HIGGINS: By the same token, your reckless actions shouldn't punish me by maybe the rest of my life I stay in a wheelchair while you go out and drive your car again and knock somebody else down. I am being punished for the rest of my life by perhaps someone's reckless driving or reckless actions....

SENATOR CHAMBERS: Senator Higgins....

SENATOR HIGGINS: ....but they are not being punished.

SENATOR CHAMBERS: ....understand, I am not disagreeing with any of the things you are saying, I am simply saying that the criminal law is not the means to address that because you still would face the same problems anyway. But we would have created additional burdens on the criminal justice system that don't solve the problem that you are concerned about.

SENATOR HIGGINS: Well, I would just guess we won't agree on that, Senator Chambers, because as far as I am concerned the criminal justice system right now doesn't address itself to a lot of the problems in society and this is what I keep hearing from my constituents. Thank you, Senator Chambers.

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, Senator Chambers, going back to this change that would be made as I understand by your amendment, would you agree that the word "reckless" is of less severity than the word "maliciously"?

SENATOR CHAMBERS: I think "reckless" is less serious than... yes, it is less.

SENATOR NICHOL: Yes. Well, as I under....now this came from the County Attorneys Association, as I understand, and would it be true also that they could get more conviction if we changed this to "reckless" than if we left the wording "maliciously" in the statute?

SENATOR CHAMBERS: Yes, that is true because a lot of times a reckless action is one where you are not even conscious of what you are doing in terms of its damaging somebody else but malice requires you to know what you are doing and it has the element of intent also.

January 8, 1982

LB 347

SENATOR NICHOL: I don't know that it was brought out in hearing and if it was, I was not...I do not recall it, but is the word "reckless" the wrong word to use here, Senator Chambers, in a legal sense?

SENATOR CHAMBERS: In a criminal statute I think that it is.

SENATOR NICHOL: Well, this is a criminal statute, is it not?

SENATOR CHAMBERS: Yes, it is.

SENATOR NICHOL: As a layman, Senator Chambers, it seems to me that "reckless" seems to be the wrong word in here.

SENATOR CHAMBERS: Yes, it is. So what the law says right now is intentionally or maliciously.

SENATOR NICHOL: Okay, so really what you are....and if your amendment should pass, then the statute the way it is written or the way it would revert to would be that we would leave "maliciously" in the statute and remove "recklessly" so that the county attorneys would have a more difficult job to prove malicious intent than if we had the word "reckless" in there. Is that correct?

SENATOR CHAMBERS: No. Senator Nichol, it is not a matter of proof that creates the problem, it is the idea that if somebody does not have the required intent and malice and intent is, they are almost interchangeable words, based on what they actually wind up meaning....

SENATOR NICHOL: You mean....

SENATOR CHAMBERS: You cannot prosecute somebody under the criminal law for an act if it is simply reckless. But if there are other elements in it that would show intent....

SENATOR NICHOL: Well....

SENATOR CHAMBERS: ....then you can....or malice, then you can punish somebody criminally.

SENATOR NICHOL: Well, but the intentional is already in there and would remain there if your amendment passed, right?

SENATOR CHAMBERS: But they don't say "intentionally and recklessly". They say "intentionally or" so there need be no intent whatsoever. However you define "reckless", remember

January 8, 1982

LB 347

there is no intent to damage somebody, but you do something and damage results to a person, so they can charge you with a crime for that act which was not intentional.

SENATOR NICHOL: But you are willing to have the statute go back to intensely or maliciously, right?

SENATOR CHAMBERS: Right.

SENATOR NICHOL: Okay.

SENATOR CHAMBERS: Right.

SENATOR NICHOL: All right. I don't see too much wrong. Thank you, Senator Chambers. I don't see too much wrong with changing that part of the wording back. I don't know that it is all that big a deal, but if we have intentionally or either maliciously or recklessly in there, the county attorneys still have something to work with. Thank you.

PRESIDENT: Is there an amendment on the desk, Mr. Clerk?

CLERK: Mr. President, Senator Kilgarin would move to amend the Chambers amendment. (Read the Kilgarin amendment as found on page 166 of the Legislative Journal).

PRESIDENT: Senator Kilgarin.

SENATOR KILGARIN: Yes. The amendment does essentially what Senator Chambers' amendment does except it spells it out so that it will be in the bill and it picks up one more "or recklessly". So it basically does the same thing Ernie...or Senator Chambers' amendment does. The only thing I would say and would like to bring out is when you are talking about recklessly, you know, my little sister could be out at Rosewater School playground and recklessly throw a rock or something or bat, a ball, baseball, whatever, at a window and fall into this, so I think it is a very good amendment and I would appreciate your support.

PRESIDENT: Senator Chambers, do you have anything further on Senator Kilgarin's amendment? All right. No further discussion, so, Senator Kilgarin, I guess we will vote on your amendment to the Chambers amendment. The motion is the adoption of the Kilgarin amendment to the Chambers amendment. All those in favor vote aye, opposed nay. We are on General File, simple majority, that's right. Didn't change that rule. Have you all voted? Record the vote.

CLERK: 15 ayes, 5 nays, Mr. President, on adoption of



Senator Kilgarin's amendment.

PRESIDENT: Motion carries, the amendment to the amendment is adopted. We are now ready to adopt the Chambers amendment as amended. Senator Chambers, any further discussion?

SENATOR CHAMBERS: Mr. Chairman, only for the purpose of trying to make clear what I am doing. The criminal justice system should for clarity relate only to acts that are crimes. The difference between a criminal act and a civil action is that the state has declared certain conduct to be forbidden. If you engage in that conduct, the state itself will use its money, its prosecutors, to charge you with that offense, then if you are convicted the state will punish you by putting you in jail, charging you a fine, or both, or probation or any of the means available to the state for punishment. That is what the criminal law does. It punishes forbidden conduct. The standard of proof is beyond a reasonable doubt. On the civil side where you have disputes among individuals and the state is not involved at all Senator Higgins and I reach such a state of disagreement that one of us or both of us do some things that one or both do don't like that we decide that maybe we should go to court to settle it. In that instance, the only thing the state has done is to provide the forum for the two of us to fight it out. The state does not provide the attorneys. The state does not pay the cost. We deal with each other, and if one of us wins, the other has to pay some money. But there is no jail, there is no fine, it is strictly a forum for citizens to fight it out with each other. So think of the criminal side on the right, the civil on the left. If we remove the language that I am trying to get out of the criminal law, the citizen's right to proceed against somebody who has damaged them still exists, but it leaves intact the requirements in the criminal law that before the state will punish you, you have to do something intentionally or maliciously, meaning that you know the conduct is forbidden, you are aware of what you are doing and you do it anyway. And all I am saying is that before you punish somebody for committing a crime, we ought to have the requirement that it be intentionally done or maliciously done. So criminal mischief would not be changed at all by my amendment. All I am saying is leave the statute dealing with criminal mischief as it exists now. That is all that my amendment would do. Thank you.

PRESIDENT: The motion then is the adoption of the Chambers amendment as amended. All those in favor vote aye, opposed nay. Have you all voted? Six are excused, Senator Chambers.

January 8, 1982

LB 347

Has everyone voted that is in the Chamber that wants to vote? Yes, you are already on here. Yes, he is already counted. Well, Senator Chambers, I guess you want to have a Call of the House and....

SENATOR CHAMBERS: Yes, I don't have much choice, Mr. Chairman.

PRESIDENT: Clear the board, we will have a Call. The motion is, shall the House go under Call? All those in favor vote aye, opposed nay. The question is, shall the House go under Call? Record the vote.

CLERK: 19 ayes, 1 nay to go under Call, Mr. President.

PRESIDENT: The House is under Call. The Sergeant at Arms will see that all members are back at their desks, all unauthorized personnel leave the floor. The House is under Call, register your presence. Each one register your presence so we will see who is here and who isn't. We will authorize....call ins will be authorized on this. Anyone want to call in a vote, why go ahead.

CLERK: Senator Wagner voting yes.

PRESIDENT: Voting yes. All right....

CLERK: Senator Kremer voting yes.

PRESIDENT: Okay.

CLERK: Senator Dworak voting yes. Senator Beyer....

PRESIDENT: Did he vote?

CLERK: No.

PRESIDENT: Record the vote.

CLERK: 27 ayes, 9 nays, Mr. President.

PRESIDENT: The motion carries, the amendment is passed as adopted. Senator Nichol.

SENATOR NICHOL: Mr. Chairman, I move for the advancement of LB 347 to E & R Initial.

PRESIDENT: All right, motion....is there any further discussion? Senator Schmit, on the advance of LB 347.

January 8, 1982

LB 180, 347, 709

SENATOR SCHMIT: Mr. President and members of the Legislature, I think the bill is in better form than it was and again I want to commend the persons who drafted the bill for their efforts in attempting to provide some additional methods of correcting the abuses that are addressed by this bill. But I want to ask you to again review the bill very carefully, as I did yesterday. I think that we were treading on dangerous ground. I think that we need to be especially careful of this kind of legislation so that we do not find ourselves in a situation where innocent parties are going to be in serious jeopardy in a few years because of this legislation. So read it very carefully before it comes up on Select File. I hope that we all know the bill very, very closely. I ask you again because I think that without Senator Chambers' amendments and without Senator Beutler's amendments the bill could not have passed.

PRESIDENT: All right, anything further? Anything further, Senator Nichol? The motion then is the advancement of LB 347 to E & R Initial. All those in favor vote aye, opposed nay. I would remind you the House is still under Call. Have you all voted? Record the vote, Mr. Clerk.

CLERK: 40 ayes, 0 nays to advance LB 347, Mr. President.

PRESIDENT: The motion carries, LB 347 is advanced to E & R Initial. The Chair would like to take this opportunity to introduce some visitors of Senator Vickers and I believe he is visiting with them back here under the south balcony. Mr. and Mrs. Donald Ankenman, Jr. of Wiltonville, Nebraska. Welcome to the Ankenmans to their Unicameral. Would you stand up folks and be recognized. The Clerk may read some matters in for the record.

CLERK: Mr. President, I have a new bill, LB 709 offered by Senator Beutler. (Read title). (See page 167 of the Legislative Journal).

Mr. President, Senator Barrett would like to have a meeting of the Business and Labor Committee underneath the north balcony at 10:30. The Business and Labor Committee underneath the north balcony at 10:30.

Mr. President, Senator Chronister asks unanimous consent to add his name to LB 657 as co-introducer.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The next order of business is LB 180.

January 18, 1982

LB 32, 198, 215, 264, 274, 274A,  
347, 413, 431, 465, 664, 848-851

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Chaplain.

CHAPLAIN PALMER: Prayer offered.

PRESIDENT: Roll call. Senator Fenger, do you want to hit the button so we can get started? Thank you. Now we will start. Record the presence.

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

PRESIDENT: Quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand correct as published. Any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 198 and recommend that same be placed on Select File with amendments; LB 274 Select File with amendments; LB 274A Select File with amendments; LB 413 Select File; LB 32 Select File with amendments; LB 215 Select File with amendments; LB 347 Select File with amendments; LB 465 Select File with amendments; LB 264 Select File with amendments; LB 431 Select File with amendments. Those are all signed by Senator Kilgarin, Chair. (See pages 311 through 316 of the Legislative Journal).

Mr. President, I have a Reference Report referring LBs 839 through 847. (See page 316 of the Journal).

Mr. President, communication from the Governor addressed to the Clerk. The Governor has signed LB 664.

PRESIDENT: Ready then for agenda item #4, introduction of new bills, Mr. Clerk. Are there any bills to introduce?

CLERK: Yes, sir, there are.

PRESIDENT: Proceed.

CLERK: Mr. President, new bills. LB 848 offered by the Public Works Committee and signed by its members. (Read title). LB 849 offered by the Public Works Committee and signed by its members. (Read title). LB 850 by the Public Works Committee and signed by its members. (Read title). LB 851 offered by the Public Works Committee and



January 20, 1982

597, 714, 788  
LB 375, 127, 127A, 347

SENATOR CLARK: The motion before the House is the advancement of 375 to E & R. All those in favor vote aye, opposed vote nay. I would like to announce to the Legislature while we are waiting for the vote, there are sixteen students from the Nebraska School for the Deaf. Their Senators are Senator Stoney, Wiitala, V. Johnson, Kilgarin, Newell, H. Peterson, Apking, Chronister, Cope, Warner, Fowler, Carsten, Johnson and Burrows. Welcome to the Legislature. Record the vote. Voting aye.

CLERK: Senator Clark voting yes. 29 ayes, 4 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. I imagine in the intervening time, the Clerk has a lot of things to read in.

CLERK: Mr. President, your committee on Urban Affairs gives notice of public hearing for Wednesday, January 27.

Your committee on Business and Labor gives notice of hearing for Wednesday, January 27 and February 10.

And your committee on Public Works gives notice of hearing for Thursday, January 28. Those are all signed by their respective chairmen.

Senator Nichol would like to print amendments to LB 347; Senator Sieck to LB 127 and 127A. (See pages 381-384 of the Legislative Journal.)

Mr. President, your committee on Judiciary whose chairman is Senator Nichol reports LB 597 advance to General File with the committee amendments attached. (See page 384 of the Legislative Journal.)

Mr. President, I have a reference report referring LB 881-966.

Mr. President, Senator Koch would like to add his name to LB 788 and Senator Fenger to LB 714 as cointroducers. (See page 387 of the Legislative Journal.)

SENATOR CLARK: No objection, so ordered.

CLERK: Mr. President, your committee...oh, I have another hearing notice from Constitutional Revision and Recreation setting hearing for February 4, 5, 11, 18 and 19.

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed



January 27, 1982

LB 347

CLERK: Mr. President, there are E & R amendments to LB 347 pending.

SENATOR CLARK: Senator Kilgarin. Senator Kilgarin, will you take the E & R amendments to 347?

SENATOR KILGARIN: I move the E & R amendments to LB 347.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed no. The amendments are adopted.

CLERK: Mr. President, the first amendment I have to the bill is from Senator Nichol and Senator Nichol's amendment is found on page 381 of the Legislative Journal.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, this amendment was brought to the Judiciary Committee by State Fire Marshal Wally Barnett to handle a very specific problem that Fire Departments are having in certain parts of the state. There seems to be some confusion regarding the current law governing false reporting of fire alarms. Because of some of the modern methods and modern technology used in some of the facilities which relay information directly to Fire Departments regarding the need for the Fire Department's assistance, some county attorneys are reluctant to use present language in the false reporting law to cover some of these instances. The State Fire Marshal Office has determined that it would be most helpful if current statutory provisions were modified so that there is no doubt in anyone's mind that setting off one of these automatic fire alarms either by electric, electronic, telephonic, or mechanical means comes within the provisions of the false reporting law. This has been a particular problem in some college dormitories and, of course, there is expense wherever you have fire departments or emergency personnel responding to these false alarms and false calls. In areas where the county attorney has declined prosecution because he does not feel present law is adequate, the problem of false...as I was saying, Mr. Chairman, in areas where the county attorney has declined prosecution because he does not feel present law is adequate, the problem of false reporting or setting off these automatic alarms has worsened. The amendment to 347 would amend the Criminal Code by drafting in language which would clarify the false reporting law making sure that it applies to setting off these automatic alarms. I ask for the adoption of the amendment.

SENATOR CLARK: Senator Beutler, do you want to talk on the

January 27, 1982

LB 347

amendment?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I just had one question. Has this had a public hearing, Senator Nichol?

SENATOR NICHOL: I don't believe so. Not specifically, however, the reporting of false alarms has been dealt with but because of some of the cunning, clever ways of setting off alarms falsely has come to us rather late so we thought it important enough that we should introduce this amendment.

SENATOR BEUTLER: Senator Nichol, are there any issues known to you related to this particular amendment? Are there any controversial matters or any questions that should be discussed by this body?

SENATOR NICHOL: No, no controversial ones, the specific need is this, Senator Beutler, in that, and as I said it was most particularly being aware of in college dormitories where very cunning and sly methods are used to set these off and they are done, you know, some young folks are not all stupid. In fact they are very clever in setting these off and it isn't covered except in this amendment so that county attorneys would feel they had the grounds on which to file charges when they are caught. In answer to your question, I don't think there are any problems there or controversial issues here.

SENATOR BEUTLER: Thank you, Senator Nichol.

SENATOR CLARK: Is there any further discussion on the Nichol amendment to 347? If not all those in favor vote aye, opposed vote nay. Have you all voted? It takes 25 votes. Once more, have you all voted? Record the vote.

CLERK: 25 ayes, 0 nays on adoption of Senator Nichol's amendment.

SENATOR CLARK: The amendment is adopted.

CLERK: Mr. President, Senator Beutler would now move to amend the bill.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, you may recall the last time we discussed 347 we discussed the penalties for child abuse and for abusing the elderly and incompetent and we talked about negligence versus inten-

tional acts and we talked about the unfairness or possible unfairness in many situations of requiring or instituting a felony penalty for negligence...negligent acts. This amendment today is merely following up with that. Under the statute the way it is right now for any second or subsequent conviction a person can be guilty of a Class III felony. This is the two or more convictions section of the statute and so under the law the way it is now for two negligent actions you could be penalized with a Class III felony which is a severe penalty. So what the amendment does is to strike the subsequent conviction sections in both the child abuse and in the incompetent, abuse of the incompetent and disabled, on the theory that you don't want to do that for two negligent actions and also under the theory that now you have a felony penalty for one offense. I am not sure that it makes much sense really to have a slightly higher degree felony penalty for two offenses anyway. So that is the nature of the amendment which I hope you will approve. Thank you.

SENATOR CLARK: Is there any discussion of the Beutler amendment. If not, all those in favor vote aye, opposed vote nay. Have you all voted? Once more, have you all voted? I am going to have to call the vote. You are about to go under Call, I am afraid. Senator Beutler. Record the vote.

CLERK: 26 ayes, 1 nay on adoption of the Beutler amendment, Mr. President.

SENATOR CLARK: The amendment is adopted. The next amendment.

CLERK: Mr. President, Senator Sieck would now move to amend the bill.

SENATOR CLARK: Senator Sieck.

CLERK: Senator Sieck and Lowell Johnson.

SENATOR SIECK: Mr. President, members of the body, this amendment deals with purse snatching and I have a couple of letters I would like to read to you to explain the bill. Am I on?

SENATOR CLARK: Yes, you are on.

SENATOR SIECK: The first letter is from a Lancaster County attorney, a man by the name of Mr. Michael Heavican, and he is in support of this amendment to reenact the larceny from the person statute. Now this was eliminated back in

1972. "Now it would be our intent to use the statute of purse snatching incidents. The most frequent victims in these incidents are elderly women. Although the victim may not be physically attacked or knocked down, I assure you that it is a frightening experience. There has been an increasing number of these thefts in Lincoln and reenactment of this larceny from the person statute would help curb these incidents." And with the present problems with the economics in our state and we can expect more of these things to happen. So I do feel we have to strengthen this law in order to protect these individuals. I can assure you that there is fear in the Omaha area especially of purse snatching. An incident happened in Omaha where a lady had just cashed a check and was walking in the parking lot of a shopping center and some boys drove by with a car, grabbed her purse and she had so many things of value in that purse, she hung onto her purse. They drug her along the car. She broke her hip but she maintained her purse. So these incidents have to stop and so that is why we feel that this has to be included in this statute. Now here is a letter I received from Omaha, and again it is from the County Attorneys Association, "I am writing to explain the need for the amendment to LB 347, reenactment of the statute providing for the crime of larceny from the person which was found in the law of 28-505 before revision of the Criminal Code. The penalty previously provided by the law was one to seven years. The amendment classifies larceny from the person as a Class IV felony. The maximum penalty is five years, \$10,000 or both. There is no minimum. In reenactment of larceny from the person is primarily aimed at purse snatching incidents which are frequent occurrences in Omaha and Lincoln and a growing problem in our medium sized cities. Frequently the victims are older people. Even when the purse snatcher does no violence to the person, it is a frightening experience. Unless the value of the case contents exceeds \$300 which most often is not the case, the offense is a misdemeanor. However, the victim may lose credit cards resulting in hundreds of dollars of unauthorized charges. Since the thief has the victim's identification he is often able to forge any check blanks in the purse or cash checks made payable to the victim. The consequences of the theft are far beyond the loss of the purse itself as the victim must replace all stolen identification, such as, driver's license, social security cards, credit cards and so forth. Since purse snatching can often result in violence to the victim where the lady may resist the snatcher, I believe the reenactment of the statute is appropriate." I move for the enactment of this amendment.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I would like to vigorously oppose this amendment. This, you know of all the areas of the law where it is bad to start making law from the floor of the Legislature, the criminal law is the very worst because each word means something, each phrase means something, and when you start fiddling around with things, you make big changes without knowing it sometimes. Basically I don't see any need to change the law. We have a law. It is called "robbery". A person commits robbery if with the intent to steal he forcibly or by violence or by putting in fear takes from a person of another any money or personal property, which is a purse, of any value whatever and the penalty for robbery is a Class II felony which is a more severe penalty than what is being suggested in this amendment. And what I am suggesting to you is that we are doing the very opposite thing that this Legislature did a few years ago when we came in here and cleaned up our criminal code. We are confusing the law again. We are adding more and more statutes for individual situations that are taken care of by the general statute. I would like to know what is wrong with the robbery statute, "by putting in fear", and I would like to know if there is any prosecutor in this state who has objected to prosecuting a purse snatcher under the robbery statute or who would dare to say that he could not prosecute under the robbery statute. I think this amendment is totally unnecessary. At the very least it should go to the Judiciary Committee for a review as to its necessity and as to its advisability. Thank you.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, members of the body, I concur with Senator Beutler. I read this amendment as obvious that a few people in utilities don't think they are protected. Somebody comes into my home...which amendment are we on? Purse snatcher. Well, that is already covered. Why do we have to put purse snatchers in there? It is redundant and I oppose the amendment.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I would oppose this amendment at this time. As I recall, last year the county attorneys wanted this in because, as I recall from memory and I hate to do this because it just came to my attention, but the reason they wanted this was so that they could use plea bargaining on youthful offenders



so that they would not have to file charges against them under the burglary statute. So I would oppose this at this time, and if those promoting this would want it, I would certainly suggest it go back to a committee for hearing.

SENATOR CLARK: Senator Sieck, do you wish to close?

SENATOR SIECK: Yes. Mr. President, members of the body, I would like to clarify this a little bit. If there is a robbery, there has to be an act of force, violence or such like. So many purse snatchers grab the purse, there is no threats, no violence, and this is what this is trying to cover that isn't in the statutes at the present time, not this type of law. Yes, robbery is, and if you have a robbery, you have to have threats, you have to have force or violence of some type. This does not cover that type of incident. This is where an individual comes along, grabs a purse without any violence, without any threats and walks off with it and that is the purpose of this amendment. So I would ask the body to accept this amendment.

SENATOR CLARK: The question before the House is the adoption of the Sieck amendment. All those in favor vote aye, opposed vote nay.....ring the bell because we are having trouble with the bell. All those in favor vote aye, opposed vote nay. Have you all voted? Only once more, have you all voted? Record the vote.

CLERK: 12 ayes, 13 nays, Mr. President, on the adoption of the amendment.

SENATOR CLARK: The amendment lost. Do you have any more amendments?

CLERK: Mr. President, Senator Sieck and Senator Lowell Johnson move to amend the bill.

SENATOR CLARK: Senator Sieck or Senator Johnson, do you want to take it?

SENATOR L. JOHNSON: Mr. President, members of the body, this amendment to LB 347 involves the addition of services indicated under the theft provisions of 28-515. In addition to labor, professional service and telephone would include electric service, natural gas service, or other public service including cable television, not only the theft of it but the provision of any furnishing of equipment or devices which would tend to promote the theft of such service. This has again been renewed as a necessity by the Rural Electric group who have indicated that in

January 27, 1982

LB 347

many of the rural districts who now schedule irrigators to reduce peak electrical consumptions have noticed that some irrigators are tampering with the load control devices to allow them to bypass the irrigation scheduling. The theft of services have also been enumerated in the past by the Omaha Public Power District and by our own public utility in Fremont, Nebraska, and the general assumption is and report is that the theft of electricity has been a problem for most electric utilities.

SENATOR CLARK: Senator Beutler, do you want to talk on this amendment?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, a couple of questions of Senator Johnson if I may.

SENATOR CLARK: Senator Johnson, will you yield?

SENATOR L. JOHNSON: Yes.

SENATOR BEUTLER: Senator Johnson, has this had a public hearing in the Judiciary Committee?

SENATOR L. JOHNSON: No, it has not.

SENATOR BEUTLER: Is there any reason why they couldn't have put in a bill that would have had a public hearing on this? Did they miss out for some reason. Is there any emergency?

SENATOR L. JOHNSON: The problem is a continuing problem.

SENATOR BEUTLER: So there is no particular emergency at this time?

SENATOR L. JOHNSON: No emergency, that is right.

SENATOR BEUTLER: What is the penalty for violation of 28-515?

SENATOR L. JOHNSON: It is described in Section 3 as a Class II misdemeanor.

SENATOR BEUTLER: As a Class II misdemeanor?

SENATOR L. JOHNSON: Right. At the bottom of that page just before Section 2.

SENATOR BEUTLER: Okay, thank you, Senator Johnson.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, I would have no objection to this amendment. It has been discussed previously at various times but it seems clear and I would have no objection to it.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: Yes, I would just like to say to Senator Beutler that last year there was a bill in dealing with the same issue. Fortunately that bill did not get out of committee. They have come back with a much more legitimate request, much more practical, and so the issue did have a public hearing, Senator Beutler, and I think this amendment is well worth our consideration, favorable consideration of it.

SENATOR CLARK: Senator Nichol, for what purpose do you rise?

SENATOR NICHOL: Just to add to what Senator Kilgarin said, and as I recall the bill last year had triple damages and all this sort of stuff which was not acceptable to the Judiciary Committee, and also to answer the question that was asked a little bit ago, Class II misdemeanor, maximum six months in prison or \$1,000 fine or both and there is no minimum fine so in answer to the question that was asked of Senator Johnson.

SENATOR CLARK: Does that answer your question, Senator Kilgarin? Senator Kremer.

SENATOR KREMER: A question of Senator Johnson, please. Senator Johnson, I did not quite understand your explanation. Are they actually stealing electricity or using it when they should not be using it under the scheduling program, which?

SENATOR L. JOHNSON: As reported in the committee hearings last year on a similar bill, it is very difficult to prove actual theft of the electricity unless they see the meters have been jumped or they are using illegal devices to divert the electricity around the meter.

SENATOR KREMER: See what I am getting at, Senator Johnson, you can sign up to go on a scheduling program and then at the source of supply they can shut you off whenever the load gets up to a certain rate and you can't tamper, all right, and using it when you should not be using it, that is one thing but actually stealing it and not paying for it, which one?

January 27, 1982

LB 347

SENATOR L. JOHNSON: Both.

SENATOR KREMER: Both?

SENATOR L. JOHNSON: Both reports are evident.

SENATOR KREMER: And you put the same penalty on both?

SENATOR L. JOHNSON: Right.

SENATOR KREMER: I am going to quit tampering from now on.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to ask Senator Johnson a question.

SENATOR CLARK: Senator Johnson, will you yield?

SENATOR CHAMBERS: Senator Johnson, are there any public cable television outlets in Nebraska now?

SENATOR L. JOHNSON: Public cable televisions?

SENATOR CHAMBERS: Yes.

SENATOR L. JOHNSON: I am not aware of any.

SENATOR CHAMBERS: So you are going to put a private operation into this amendment, and what I want to ask you, is who asked you to bring this amendment in, the cable television people, the natural gas people, electric service or all of them?

SENATOR L. JOHNSON: I think Senator Sieck could help me on this. It has been the rural electric groups of Nebraska plus the County Attorneys Association.

SENATOR SIECK: Yes, Senator Chambers.

SENATOR CHAMBERS: Yes.

SENATOR SIECK: The rural electric people was the prime sponsors of this bill because of the issues that Senator Johnson portrayed to, the tampering with meters, bypassing the meter so the meter wouldn't read.

SENATOR CHAMBERS: Okay, so let me ask you then, now that I know. What is done presently if that is determined to be the case?

SENATOR SIECK: There is no penalty involved and we can't fine the individual, but what we tried to do in a public power situation which I am familiar with, we tried to collect the back but there is no way to figure it out, how much they have used because they bypassed. So we have to use their back payment practices so the only thing that we can do is penalize them to prevent them from doing this in the first place. It is very difficult to designate the amount of actual kilowatts that they are using because you might use say a thousand more one month than you do another month so it is very difficult.

SENATOR CHAMBERS: Senator Sieck, since you are familiar with these public power issues, in lines 15 through 17, we talk about benefits of service at less than the proper rate or charge. Now is there a law that makes it a violation for a director of a power board to receive service at a reduced rate or no rate? Does that violate the law that exists now? Do you know?

SENATOR SIECK: I cannot answer you. It is a policy, I will say this, now I don't know whether it is a law, but I know it is a policy of not to give directors or officials of a power district special services as you are talking about.

SENATOR CHAMBERS: If a director under this bill were not paying for the service he was receiving, what would this word "unauthorized" refer to? Who could authorize him to receive that service without paying for it? Or does this mean that once a rate is set, that rate must be paid by everybody who is receiving the service and nobody can authorize a deviation for a director?

SENATOR SIECK: That is correct. That is right.

SENATOR CHAMBERS: Thank you. Members of the Legislature, I am not sure how I feel about this amendment, but if it could prevent the travesty that occurred in Omaha recently where a director was not paying his bills at his tavern, then I think that would justify an amendment like this. Thank you, Senator Sieck. It is a tragic thing if a law is only designed to get the little nickel and dimers or even the big companies that might try to trick these services out of public power districts without paying for them and disregard the ones whose job it is, who are placed in a position of trust, and therefore it is their job to make sure these utilities are properly administered. So because of what has happened in Omaha, and so many terrible things happen in Omaha, I think I am going to support the



January 27, 1982

LB 347

amendment at this point. I don't know ultimately what I will do because I am going to try to get some more information, but what I am saying here I hope will be like a message to what I consider is a corrupt individual in Omaha.

SENATOR CLARK: You have one minute left, Senator.

SENATOR CHAMBERS: I know a lot of poor people, not only in the district where I live but other parts of Omaha who had their power cut off in the wintertime, even though that is not supposed to happen, and they are lying if they say they don't cut it off because people have called me and I have had to call Ford Jacobsen to get some things restored or Del Durham (phonetic), whichever one represents the power company. So I am going to support this amendment at this point for that reason alone, what Red Munnelly has done in Omaha in tricking his way to free service for a number of months.

SENATOR CLARK: Senator Beutler, do you want to talk?

SENATOR BEUTLER: Mr. Speaker, members of the committee, I just want to...I want to oppose the amendment and I want to do it because we really are establishing a terrible precedent. Here we are with a criminal bill three times today we have attached or tried to attach amendments to it which have not had a public hearing and all three of them have made very substantive changes in the law. And what is happening to our committee system? Why haven't these people, and you should ask yourself this, why haven't they come in with these bills at the beginning of the year and asked for a change and gone through the regular process? It is not that they are such small matters that they are not worthy of a public hearing. They are all worthy of a public hearing. In no case has it been said that there is an emergency that exists now that has not existed or any different situation that has not existed in prior time. I suggest to you that we are abusing our process, that there is a wisdom to that process, and that we will ultimately suffer from ignoring the wisdom of that process, and we will suffer because this bill will be back to us, these things will be back to us in one form or another for amending or patching, next year or the year after. Let me tell you something else I think is happening in this state and where we just have to try to take a different tack a little bit more. We are coming in here time after time, and the county attorneys are apparently saying, well, this needs to be more specific to prosecute, that needs to be more specific to prosecute. Well, I will tell

you they don't have to be more specific to prosecute. This new language that we are adding in this proposed amendment is covered by theft by deception in 28-512 and is probably covered by the existing language in that very statute, 28-515, and I think what is happening is that in many parts of the state the county attorneys are copping out because for one reason or another they don't want to prosecute and they are telling you they can't prosecute because they are not sure, the language is not clear enough, and then we trot back up here at the Legislature and go through a bunch of hocus-pocus to make the language more specific so we can go back and put the political pressure on the county attorney that he should have had put on him in the first place. I think that is what is happening on a number of these things. I think we have got to stop that and we have got to tell the county attorney to prosecute the statute, and if he doesn't want to do that, we have got to get a new county attorney. Thank you.

SENATOR CLARK: Senator Lamb.

SENATOR LAMB: Mr. President, members of the Legislature, I would just like to comment on Senator Beutler's comments in regard to the process. I continue to believe that this Legislature operates in the most outstanding method of any Legislature in the country in that we do have public hearings on every bill. Now if we are not going to be able to offer amendments to those bills, our process is going to come to a complete standstill and there is no way it can operate. We do the very best job we can in holding public hearings but we cannot hold a public hearing on every amendment. There is no way that a bill can be introduced so that no amendments are allowed and that is basically what Senator Beutler is saying. I do not agree with that. I think the process is legitimate, is good, and that some of these amendments do have to be discussed on the floor and accepted by the body in that manner.

SENATOR CLARK: Senator Chambers, did you want to talk again?

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, a moment ago I indulged myself as I don't usually do. I do have a deep feeling about what happened in Omaha but Senator Beutler's comments brought me back down to earth, made me take another look at what my responsibility as a legislator is, and I have to agree with him. I don't think this is the method or the means that ought to be employed to bring this amendment...and I will tell you why it is offered as amendment and not a bill. When a

matter such as this has gone before a committee and there has been a full-blown public hearing and the committee could not be persuaded to accept that point of view, then the lobbyists circumvent that committee and they use the amending process and we all know this. It is easier to lobby members of the Legislature who have not been to the hearing, who have not heard the pros and cons discussed in detail of the issue. So it is easy to tell a Senator, "You don't understand all of the ramifications of this matter but the issue is a sound one, the amendment is needed, and I think you ought to accept it, and for old times sake, which we don't want to be forgot, adopt this amendment. Trust me this time, and if it is not what it needs to be, we can come back and tinker next year", as Senator Beutler indicates would be the case. But I doubt that there are many people on the floor who have much familiarity with the criminal law as it operates. They are millions of people in the state who will say there ought to be a law against, and then be very upset when somebody offers a law against something that they don't particularly agree with. So we have to, as a Legislature, serve as a type of sieve or strainer that will let the particulate matter be caught and all the fluid just wash away. This I feel is some of the fluid that ought not be caught in the sieve of this particular bill. I have to reverse what I said just a few minutes ago, but one thing I got out of it, I had a chance to say what I felt about what Munnely did and his friends can run and tell him if they choose to do so and I would tell him the same thing. But a lot of times we need the forum of the Legislature to tie these issues together, to indicate that the problem may be more widespread and of much greater depth than we would have brought to our attention by those who talk about tinkering with a meter here or some irrigation system there. If there are problems in this area, there should be a bill, but if they don't want to bring a bill in this session, why don't they have Senator Johnson and Senator Sieck offer a study resolution so that over the period of the interim all of the people interested can bring in their points of view and we can look even at the issue of cable television, whether some of the thefts, if that is what you want to call them that occur, are based on carelessness by the suppliers of these products and services or whether it is the stratagem of the alleged thief. If there are precautions that can be taken by the possessor of these services or whatever that would prevent the improper appropriation of these services, then we ought to require those agencies to assume their responsibility and use prudent operations to solve their problems and not come to the Legislature during the rush of business with

an amendment of this magnitude. So I, despite what I said a minute ago, must acknowledge that Senator Beutler's persuasiveness brought me back to where I should have been in the first place. The prodigal son has returned home.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I do rise in opposition to the amendment. I think the amendment is unfortunately drafted because I think that this particular amendment would criminalize conduct that could be extremely innocent conduct. Let me give you an example. In Omaha if one takes the public transit system fairly regularly, you take the buses fairly regularly, oftentimes it is to your benefit to buy a bus card and a bus card is sold at a price slightly less than what we pay for individual rides. I don't think I have a bus card in my pocket right now. I think I have used up all of my little bus punches but a lot of people buy the bus cards. Now after they buy a bus card, the Metropolitan Area Transit Authority raises the bus prices and that means simply that the bus card that they have will no longer work with respect to subsequent rides because that bus card is set at a price slightly less than what the new prices are. So it can well be, and this happened to me, it literally has happened to me, I will be unaware of the increase in the bus price and I will walk on that bus with my old bus card which I will present to the driver of that bus and the driver may very well allow me to ride. Now I have just used a public service at less than the full cost of the service and I have been able to use that service by an unauthorized means, i.e., the old bus card, and it is likewise a deceptive means because it is a real bus card. Now I don't think that kind of conduct should be criminalized because that is extremely innocent conduct, and yet this amendment would do exactly that. So I personally think that the amendment does not reflect really good criminal policy because it can criminalize conduct which is extraordinarily innocent in its motivation and in its behavior and I think it goes too far. I would oppose the amendment.

SENATOR CLARK: Senator Pirsch.

SENATOR PIRSCH: Thank you. Members of the body, I would just like to point out that we did have a public hearing on this issue and that the amendment at that time was different than the amendment before you and that was the objection to the Judiciary Committee members. You have heard from three of them who stood up and supported this proposal and now you have heard from a fourth and I

do support this amendment and urge its adoption. Thank you.

SENATOR CLARK: I would like to introduce to the Legislature 23 students from the Sacred Heart School in Lincoln. Joanne Glushenko is the teacher. They are in the North balcony. Will you stand and be recognized please. Welcome to the Legislature. Senator Vickers.

SENATOR VICKERS: Mr. President, members, I rise to oppose this amendment and I think a few things need to be pointed out. It was pointed out by Senator Pirsch just a minute ago that the Judiciary Committee did hear an amendment along this line but I would point out that what this amendment is doing has some very, very broad applications it seems to me. First of all I think you need to understand that if somebody tampers with a meter out there, and I think Senator Sieck pointed out earlier that this was brought to the body's attention by the rural electric, if somebody tampers with a meter out there right now, it is illegal. The present language of the statute says, "or other public service". I don't think we need to narrow that down anymore. It is illegal at the present time but the lines 15 through 17 on page 1 where it talks about "any deceptive and unauthorized means obtains the benefit of service at less than the proper rate or charge", I think could have some broad applications when you consider the load management techniques that various of the rural electric are using. It could have some applications to apply to individuals who through no fault of their own perhaps use power because that equipment is not failproof. Sometimes it doesn't shut off our well. Sometimes the irrigator might go ahead and irrigate unknowingly that he is supposed to be shut off, and it seems to me that from the broad language here you could be charging that guy for a civil penalty or for a criminal penalty when actually he is paying for the charge. The electricity is running through his meter but I think the broadest application of all is on this second page, at the top of the page in lines 3, 4, and 5. Now originally this statute talks about telecommunications service. It is being expanded to include electric service, natural gas service, and so forth, and it says, "Any person who makes or possesses any device, instrument, apparatus or equipment designed or which can be used to obtain electric service, natural gas service, and so forth fraudulently"...is in fact guilty...on the bottom line, "...is guilty of a Class II misdemeanor". Well, I think anybody in this room probably could be guilty of that because I would guess that probably everybody in this room has in their possession someplace, in their tool box, or in their shop, or in their car a screwdriver and a pair



of pliers and that is the only type of device or instrument which could be used to circumvent a meter, could be used to get some of these services. Now I had a bill that went across yesterday dealing with radar transmission devices and there were several members of this body who questioned whether or not those devices could be used for some other purpose. I pointed out to you they couldn't be but now suddenly with an amendment, without a bill having a public hearing, we are going to make it illegal to have a pair of pliers and a screwdriver, and if you wanted to carry this to its furthest extent, I suggest to you that is exactly what we are doing. Now I recognize that my good friends, the rural electricians, and I recognize my good friends, Senator Sieck and Senator Johnson, are trying to address a concern that they have but I think they had better come in with a bill that is more cleanly drafted than this and make it a bill that goes through the public hearing process rather than come in with an amendment of the nature that it seems to me this one is drafted that is so broad that it could apply to everybody everywhere and try to put it through as an amendment. I oppose the adoption of this amendment.

SENATOR CLARK: We have an amendment to the amendment.

CLERK: Mr. President, Senator Beutler would move to amend the Sieck-Johnson amendment by striking the new language found on page 1, lines 15 through 17.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, maybe we can reach a compromise on this and get on to our other business. Basically the bill does two things. It adds specifically a number of types of services to the existing statute so it expands the coverage of the statute by adding, electric service, natural gas service, and cable television, and my amendment leaves that in place so we expand the statute to include those areas. And then I delete from the proposed amendment the new language about deceptive and authorized means of obtaining a benefit at less than the rate or charge and I would like to delete that because I think that there are a lot of problems and questions that should be discussed with regard to that and that I think is the very controversial part of it. So I am suggesting to you that we delete that part, let them put in a bill and let's discuss that, and we go ahead expanding the scope of the coverage to include electric service, natural gas service, and cable television, which I think is probably what they wanted most of all in the first place. Thank you.

SENATOR CLARK: Senator Lamb, did you want to talk to the amendment?

SENATOR LAMB: Mr. President and members of the Legislature, I rise to oppose the Beutler amendment. I guess I don't see the problem and I am a little surprised at the opposition because what we are really talking about here are load management devices that have proved so successful in holding down the peaks in irrigation out in the greater Nebraska. Now if the power district is not going to have the authority to enforce the peak shaving that is taking place out there, we are doing a disservice to everyone in the state. So if you have a device out there on your irrigation well which is shut off at the office of the power district at a certain time, say ten o'clock in the morning, if those people are not obligated to leave that well off, then your whole program is negated, and as I see it this amendment is a very simple amendment that gives the authority to the power district to enforce the regulations which I think Senator Beutler and many other people endorse as a worthwhile principle, as a good effort to conserve power and to shave the peaks. So if those people can by some device, a pair of pliers and a screwdriver or whatever, wire around the control device and there is no penalty, then our whole program is down the drain. Now I think the words in there which are the key words are "deceptive and unauthorized". Nobody is going to be charged if the device malfunctions. You have to prove that it was done deceptively and there is no...I am not a lawyer and Senator Beutler is...but I don't believe that any court in the country is going to convict anybody of a crime if the device out there malfunctions. So all this is doing is putting teeth in the law where it should be and I think this is a big ado about nothing. I hope you would not adopt Senator Beutler's amendment and would then go ahead and adopt the amendment as presented by Senator Johnson and Senator Sleek.

SENATOR CLARK: Senator Kilgarin, did you want to talk on the amendment to the amendment?

SENATOR KILGARIN: Yes, thank you. Mr. Chairman and members of the Legislature, I rise to oppose Senator Beutler's amendment and to agree with Senator Lamb. I think he pointed out the most important thing that has been a controversy here today when Senator Vickers and Senator Johnson spoke of innocently not paying for something with their bus cards. Some of the words they forgot to mention, they only read so far in the bill. When Senator Vickers was speaking of "possesses any device, instrument...designed to obtain telecommunications service", it says "fraudulently

or to conceal from any supplier or...service...". Senator Lamb made a very good point in that they are not talking about someone who innocently falls into this and I agree with him that any court in the country wouldn't convict someone if they know it is innocent. So the words are in there. It says, "...deceptive and unauthorized means obtains...". I would suggest you vote against Senator Beutler's amendment. I think the amendment is well written and I would urge your support for the amendment after defeating Senator Beutler's amendment.

SENATOR CLARK: Senator Kremer, did you want to talk on the amendment to the amendment?

SENATOR KREMER: Yes, I would, Mr. Chairman. I think we are dealing with two different kinds of misbehavior. One is a direct theft. The other is a measure in that you are allowed to purchase electrical energy at a lesser rate than the standard rate applied to those that are not under the scheduling contract. However, weather can play a freak and so can the malfunctioning of a certain device that is used to shut off this supply and it bothers me considerably. I wonder if we could not, Senator Beutler, in lieu of striking the language add some language saying "...or who by any deceptive and unauthorized means obtains the benefit of service at less than the proper rate or charge are automatically to be charged with the standard rate" or something like that. You automatically go back to the regular rate rather than getting the adjustment because you are on a scheduling program. It would not provide a penalty but it would authorize the supplier or the rural electric, whoever it may be, to call the (inaudible) and, hey, you are back...you have broken your contract, you are back and we are going to charge you the regular rate. Could we provide language like that? Senator Beutler, I think I will ask you the question.

SENATOR CLARK: Senator Beutler, will you respond?

SENATOR BEUTLER: I am sorry, Mr. Speaker. (Interruption).

SENATOR CLARK: Will you respond to a question?

SENATOR BEUTLER: I would but I wasn't listening. I didn't hear the question.

SENATOR KREMER: Senator Beutler, I was about ready to support your amendment to strike the language. However, the person is in violation and he is not actually stealing the power as such but he is stealing it in that he is getting it at a lesser rate, so rather than striking that language, could we

add language saying if he does so-and-so and according to lines 15, 16, and 17, that language saying then he shall automatically pay the regular rate and he has broken his contract, something of that nature? He is penalized. Then he has to pay the regular going rate for the rest of the season for which his contract is in operation? He is buying electricity at a lesser rate because he is on a scheduling program so he is not actually stealing but he is stealing in the way that he is getting it at a lesser rate because he gets it whenever he wants it if he bypasses this. So couldn't we actually put him right back on the regular rate as a penalty rather than fining him \$300 and putting him in jail?

SENATOR BEUTLER: I guess I miss part of your point in the sense that if he is on a scheduling...he is on a schedule that is authorized by the supplier...

SENATOR KREMER: He signed a contract with the supplier, a rural electric, now I will let you shut me off any time that we reach a certain peak, and by so doing he is assessed a lesser rate than if he was not on a scheduling program.

SENATOR BEUTLER: Right, and that is all authorized. It is not deceptive or unauthorized, right?

SENATOR KREMER: No, but if he is guilty of tampering with that mechanism and then he turns his pump off and actually the company said you are off because we are reaching a peak, he still is paying a rate at a lesser rate according to the contract, but if he does that, couldn't the supplier notify him that he has broken his contract and you are back on the regular rate which is a higher rate rather than putting him in jail.

SENATOR BEUTLER: Yes, I would think that would be possible under contract law right now, Senator Kremer. If that is not in a contract, I would be surprised.

SENATOR KREMER: Well, it is in the contract and this is what bothers me. We are putting a penalty on him when he already is under the present law in my opinion.

SENATOR BEUTLER: Yes, this would, if he violates the contract what we are doing here is saying it is not only a contract violation and you pay whatever damages or penalties are provided for as between the parties but in addition it is a criminal violation under this section.

SENATOR KREMER: See, what he is actually doing, he is forcing

the ratchet up because when you hit the peak, hit the peak and then these power districts try to hold that ratchet down by putting a certain number of (interruption)...

SENATOR CLARK: You have about thirty seconds.

SENATOR KREMER: ...so I am in kind of a quandry here on what to do. Senator Johnson, would you respond?

SENATOR L. JOHNSON: In answer to Senator Kremer, if this man intentionally and by design circumvents the lower rate by tampering with his controls, he is definitely committing a crime.

SENATOR KREMER: My point, Senator Johnson, is would it not be better to force him right back, he has broken his contract, and pay the regular rate rather than put them in jail?

SENATOR L. JOHNSON: I am sure that would be automatic under the terms of the contract I am discussing...

SENATOR KREMER: Okay, well, then is your amendment necessary, all these words in line 15 and 16 and 17?

SENATOR CLARK: Senator Johnson, will you speak into your microphone please so we can hear you?

SENATOR L. JOHNSON: I do feel that by his intent of securing the services of the decreased rate during times when by contract he has agreed not to use it, he has actually committed a crime.

SENATOR CLARK: Senator Fowler, do you wish to speak on the amendment to the amendment?

SENATOR FOWLER: Mr. President, first let me say that I am amazed to hear there is crime in rural Nebraska. As an urban Senator it always seems that we are the ones accused of having crime and it is amazing now that there actually does seem to be some criminal activity outside of the urban areas but I would say that I think that lines 15 to 17, if nothing else, are grammatically placed in the wrong sentence. If you would read the amendment, there is really in Section 28-515 two sentences. The first sentence says, defines what is theft. It says, "A person commits theft if he or she obtains services which he or she knows are available for compensation, by deception or threat, or by false token or other means to avoid payment for the service." That is the end of one sentence, the definition of theft. Then the next one is the definition of services and this is



where this section that we are arguing about is added and I think lines 15 to 17 is not a definition of services. It says, "Services include labor, professional service, telephone, electric service, natural gas service, or other public service, including cable television, accomodation in hotels, restaurants...", all those things are definitions services include and then we get to something that says, "Services include...", you know it is like the beginning of the sentence. If you were to strike all that shopping list and get then to the new clause you have a new sentence that doesn't really make sense. "Services include or who by any deceptive and unauthorized means obtains the benefit of service at less than the proper rate of charge." Now I am the victim of modern English curriculum, I never learned to diagram a sentence so I may be in an area that I am not totally familiar with, that is grammar, but I do think that that clause that Senator Beutler is trying to strike really belongs up I think with the first sentence where it says, "A person commits theft...", and then you would have, "...by any deceptive and unauthorized means..." I think you have to at least move that phrase if the bill is going to make any sense. I don't think the clause that we are talking about in any way is a definition of what service is and I don't know if I am being clear on what I am trying to say but I think that what we want to be able to say is that it is theft to obtain this benefit of service by deceptive and unauthorized means not that a service is any deceptive or unauthorized means of obtaining a benefit of the services. That doesn't make a lot of sense so I think at the very least the sentences need to be rearranged. Whether or not we strike it I guess is another question.

SENATOR CLARK: Senator Kahle.

SENATOR KAHLE: Mr. President, members, I am not exactly sure about the language either but I think this is important that we get some legislation this year on this particular issue. We have been a long time talking about water conservation and energy conservation and all kinds of things. I am an irrigator and have been for many, many years and we do use interruptible service at this time. I would hate to think that of the numbers of irrigators around in my area if we all or a part of us even decided to put a jumper on that meter and circumvent the purpose of interruptible service is something that Senator Lamb stated at the best. And I might say to Senator Chambers, I don't condone what Mr. Munnelly has done in Omaha but I would say that his bill that was delinquent is child's play and a very small amount compared to what several, at least, irrigation wells hooked to electricity would cost each month. We are talking

about big business and the cheating that could occur could amount to not only thousands of dollars in lost revenue but could also jeopardize the rest of us that use the service. So, therefore, I think we need to put some teeth into this thing and so I do not support the Beutler amendment and do support the amendment.

SENATOR CLARK: Senator Sieck, on the Beutler amendment to the amendment.

SENATOR SIECK: Yes, I do not, Mr. President and members of the body, I do not support the Beutler amendment but I have to agree with Senator Fowler and I think the area of where it is placed in the bill should be up here where he was saying in definition. I am wondering whether this cannot be done in E & R instead of trying to make that change now. Pat, could I ask you that question? Can this be done in E & R to correct the language so that it is in the proper place or do we have to do that by amendment?

CLERK: Well, Senator, I don't know if E & R could do it but the easiest way if you want to change it is we just change it here and we will offer a substitute amendment with that language readjusted. That would be the easiest thing to do if you wanted to do that.

SENATOR SIECK: That was my question, yes. Okay, thank you, but I do not support the amendment that Senator Beutler has before us.

SENATOR CLARK: Senator DeCamp. He wants the question. The question has been called for. Do I see five hands?

SENATOR DeCAMP: I won't talk long. That is right. I haven't talked. Mr. President, members of the Legislature, briefly, just tickle your minds a little on something. A few years ago I sponsored some legislation to make sure we couldn't cheat the telephone company and I think we passed it and so on. What we started out with when we started it got a lot deeper because we found out just a simple amendment like we thought was going to do one thing actually was doing a whole gob of things. Now this amendment has never been in the Journal. Now I know the problem and I agree something needs to be done but as I say sometimes when we don't print amendments in the Journal, we don't get a chance to look them over, there is more in them than maybe even us that are wanting to support them realize. And as I say, let me play with your minds just a trifle here. Now we are putting in here electric service and natural gas service, two pretty big items that previously haven't been included under this law, weren't considered under this law and, obviously, they

think something needs to be done or they wouldn't try to be getting them under this law. Okay, let's move down to line 17, "Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants,...", and that is just an example, that is not the limitation, it is just an example, "...refusal to pay or absconding without payment or offer to give pay gives rise to a presumption that the service was obtained by deception as to intention to pay." Well I hate to keep harping on something that is going to happen but about February 8 a whole gob of people are going to get an energy bill, a pretty high one, I suspect. Now the way I read that once we include natural gas or electricity under this, we are also including it under the other provisions of the law. When they send you the bill immediately after service is rendered, they expected to get paid. In fact it is immediately in default in what, five or ten days? They expect payment, exactly what it says here. Are we now turning the whole bill collection system of natural gas and electricity into a system of a criminal conduct if you don't get it paid in time? I think legally you are. At least sure a heck of a case for it here. Based on strict interpretation of the criminal statutes, you are making criminal conduct. I repeat, I am not against solving the problem. I know there is going to be a lot of it and I know there needs to be something done. I do believe some more study, more attention should be given to this particular amendment, maybe the method to solve it, maybe rework this entire law because it wasn't but a few years ago we started on the criminal code, those of you that worked here. Senator Nichol, remembers it pretty well, I think he was around. Senator Chambers. When we started on that puppy the last thing anybody thought about was computer crime, computer type offenses. We found by the time we had worked on that a couple of years, they started rolling in different things. We had to completely change our criminal code as we went along to adapt to the technology of the '80s and the '70s and we did. We started putting things in there, and things that were obsolete that people were holding onto so vigorously and fighting for so assiduously really were obsolete and we found that we had spent several years of giving too much attention to the wrong things. Again, I see the problem. I agree with solving it. I really wish everybody before they make these major changes in a bill already going would go back to the drawing board and get some people from both sides together and see if you couldn't come up with something that doesn't end up making everybody that takes natural gas or electricity into the category of criminals or whatever. Maybe it doesn't, but, by golly, the way I read it taking into

conjunction existing law, remember, you are putting natural gas and electricity in there now, you may be doing more than you just anticipated and I think there are some ways to rework the whole law, and Senator Vickers, I was listening downstairs to his talk, the point in #3, they tried to take the same approach that you would use on burglar tools, for example, which is a legitimate area but you have got a whole package of case law in the area of burglar tools when you just start defining "any person who makes or possesses any device..." for the purpose of burglary, you know. You have got case law that pretty well indicates in that area. It has to be taken in conjunction with the facts of the case, location of the scene, finding a pile of tools in the back seat of a car at the scene where somebody is in somebody else's place, a little different situation. Maybe it is all okay but I have got some real grave reservations about going ahead with these amendments until some people sit down and maybe get a little more input and I guess I am a little skeptical about going ahead without ever having them in the Journal and kind of getting them cold like this. I just think you ought to check it out a little further.

SENATOR CLARK: You have thirty seconds. Thank you for not talking long on it. Senator Vickers.

SENATOR VICKERS: Mr. President, members, I rise to support the Beutler amendment. As I pointed out to you earlier and as Senator DeCamp just pointed out to you, there is some real problems with the drafting of this amendment to start with. I think that Senator Beutler has pointed out one of the real severe problems and I have got another amendment up there to correct what I consider to be another one but I think the issue that some people have raised on this floor, that Senator Kahle and Senator Lamb and others have talked about the necessity of the rural electrics to be able to instigate load management programs. I was a former director of a rural electric, I know that necessity. My district was one of the ones that has got a load management program. Senator Kahle made the comment that he thought it would be wrong for somebody to use a jumper cable and go around the meter and go ahead and keep pumping and I certainly agree that it would be wrong. As a matter of fact it is wrong. As a matter of fact it is illegal right now. We don't have to change the statutes at all to make that illegal. It is illegal and I think what we are trying to do here is kill a fly with a sledgehammer. I think we had better be a little careful about using that approach. We might find ourselves getting mashed with that sledgehammer, too.

SENATOR CLARK: Senator Beutler, do you wish to close on your amendment? Senator Chambers, go ahead.

SENATOR CHAMBERS: Mr. Chairman, I am sorry. I neglected to turn my light on and my comments will be very brief because I have an amendment up there, too. I had suggested that there be an interim study, and in view of some of the issues that have been raised by Senators DeCamp and Vickers, I think you can see that there are problems here. They have constituencies in the area where irrigation or those types of activities might occur. So you can't say that they are opposed to law enforcement. You can't say that they are trying to beat these companies. But the question that arises to me as a city person, and maybe Senator Kahle can answer this for me, do the rural electric control natural gas services, too? Senator Kahle's answer was "no". So if the rural electric...not in his area and Senator Slick is shaking his head no, too. How did natural gas get in here and that is why I asked the original question? If it is the problem that they have talked about in the rural area, then you can zero in on that, but when you talk about natural gas and then you talk about cable television also, then you have got a hodgepodge in a very few words which has very far-ranging consequences. So what I would like to see us do is adopt Senator Beutler's amendment. You won't hurt the bill. You are not saying that what you are trying to do can't be done because you have made taking these services theft so I don't understand what that other language is needed for anyway. And to level with you completely, I never did really support the amendment but it gave me an occasion to say some things about an Omaha situation but I genuinely support Senator Beutler's amendment.

SENATOR CLARK: Senator Beutler, do you wish to close?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I would just like to emphasize again that there really has been only one specific problem addressed here this morning and that seems to be the problem of meter tampering and I want to point out to you that in my opinion meter tampering is clearly already covered under the law. The section of the law that we are dealing with now is 28-515 but there is another section of the law 28-512, and let me just read you the basic, the basic sentence of the law and then go through some of the provisions. It says, "A person commits theft if he obtains property of another by deception." Now I guess I just don't see any two ways of looking at it. If you are tampering with your meter you are obtaining something for nothing and it is theft by deception. Now the statute goes



on to specifically describe some types of things that are covered and it says, "...creates or reenforces a false impression", isn't that meter tampering, "including the false impression as to value", isn't that what meter tampering is? "Prevents another from acquiring information that would affect his judgment of a transaction", isn't that meter tampering? That is a different section. Another section, "Fails to correct a false impression previously created", if you tamper with your meter and then you don't tell them that you tampered with your meter, you are violating that section. It is covered in three different sections of 28-512. Besides the argument that it is already covered, I would simply point out to you that if you are going to structure the law properly that the amendment we are talking about should be in 28-512 and not in 28-515. Now that may sound like a small point to you but this is just one of the many areas where we make the law more complex and more complicated so that even a lawyer can't understand it. Now you may think that is good but there is only one thing worse than the lawyers not understanding it and that is nobody understanding it and that is what we do when we start fracturing the law and putting in violations here and there miscellaneously all over the place. Nobody with a logical mind will look in the middle of 28-515 to find that particular section that we are now putting there. Well, the old experienced lawyers will know it is there but the young ones and the people they serve, well, I guess they will just be out of luck. Thank you.

SENATOR CLARK: The question before the House is the adoption of the Beutler amendment to the Johnson amendment. All those in favor vote aye, opposed vote nay. It takes 25 votes. Have you all voted? Once more, have you all voted? It takes 25 votes for this amendment. Senator Beutler.

SENATOR BEUTLER: If a few more can't vote, I guess I will have to ask for a roll call vote and a Call of the House.

SENATOR CLARK: We are wasting a lot of time on this. We have got three more amendments to this. Record the vote.

CLERK: 25 ayes, 5 nays on the adoption of the Beutler amendment, Mr. President.

SENATOR CLARK: The amendment is adopted. Next amendment.

CLERK: Mr. President, the next amendment is from Senator Chambers. (Read Chambers amendment as found on page 441, Legislative Journal.)

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Yes, that is the amendment, Mr. Clerk. Thank you. Mr. Chairman and members of the Legislature, if you are insistent on adding an amendment to this bill and the concern is with the rural electric problems, there has been virtually no discussion of natural gas problems or cable television. They are different and distinct. The means, I guess, of trying to appropriate these items would be different than with the rural electric problem. So if this is a rural electric amendment and the Senators are familiar with the issue being addressed, there is no need to put the natural gas or the cable television, and I think personally that some of these things can be prevented by precautions being taken by the supplier. Senator Hoagland and I were discussing very briefly the pirating of cable television services. Now the law does not allow you to take something that doesn't belong to you. We wish that everybody were so honest that we didn't have to watch our billfolds, purses or put locks on the door or take the keys out of the ignition of our car, but because we know that people will steal, there are some situations where the law will punish you if you make it easy for somebody to commit a theft. You are not supposed to leave your key in the ignition so there is such a thing as contributing to your own misfortune. The Legislature, I think, would be encouraging sloppy, shoddy business practices if every deficiency of a businessman is converted into a crime. We should make them design their implements, their service producers and deliverers in such a way that it would be made as difficult as possible to get those services or products, and by passing laws like this we discourage that. That is why I want natural gas service and cable television struck from page 1. On page 2 you are talking about telecommunications and the device that was involved in this particular section was readily identifiable as a device for that particular purpose. So you could talk about plans, diagrams, instructions, uses, assembling and whatnot and know that you are dealing with an identifiable item for the purpose of dealing improperly with telecommunications, but without modifying any of the other language, you insert "electric service, natural gas service or other public service including cable television", then there is a following provision that relates to telecommunications, the first clause deals with possessing or making the device and it is for the purpose of taking these telecommunication services. Then on line 7, "...or to conceal from any supplier or telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunication:". After that second reference to telecommunication, you don't include

"electric service, natural gas service or other public service including cable television". It would create an even more awkward construction than the one that Senator Fowler pointed out on the previous page. You don't need this language on page 2, therefore I am asking that on page 1 you strike "natural gas service" and the reference to cable television and on page 2 you strike that new language because it is superfluous anyway. How could you prove that a pair of pliers are designed to take these natural gas, electric service or cable television services? You can't but if there is an implement designed to steal telecommunications services, that is readily identifiable. So I am asking that you adopt this amendment, and if you insist then on amending 347 with Senator Johnson's amendment, you will at least be restricting it to what everybody has talked about as being the problem.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, members, I rise to support Senator Chambers amendment, and if Senator Chambers is successful, then the amendment that I have got up there following Senator Chambers' can be withdrawn because I was going to try to strike the new language on page 2, the same as Senator Chambers is. I think Senator Chambers made some very good points and I would hope the members of the body will listen. As I pointed out to you earlier, the language on page 2 would include anybody in this room and I pointed out at that time that a pair of pliers or a screwdriver. Another instrument, of course, that would be illegal to possess would be a magnet. A large magnet stuck on an electric meter can make it do many strange things, most of them not make them speed up, so it would seem to me that the drafters of this amendment again were trying to draft something that is entirely too broad and I think Senator Chambers' amendment would narrow it down to the original intentions of the individuals that brought this amendment to us and I have no problem with that. If it is narrowed down so it only includes electric service, which I think is already included in the statutes, as I read it, but I don't think there would be any problem with including the words "electric service" there where Senator Chambers is leaving it. So I would urge the body's adoption of Senator Chambers' amendment.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I would just offer a suggestion to everybody. I think it is a real important area in the law that has got to be dealt with, as I kind of suggested, but I don't think you are going to get her dealt

with today with the amendments because I know there is more amendments coming. There is some problems with it and I would just suggest to both sides if they sit down they can solve this problem with some language that will accomplish something rather than getting the bill tied up in hours and hours of debate. I think there are some changes that need to be made. Do you have any attitude on that, Lowell? Lowell would agree to hold off and I think the other people would. Why don't we just pass over and you people get together and write out some decent amendments. I want to do what you are doing and I know the rurals need it but I can't support that the way it is. There is some garbage language in there that is going to cause more problems than solutions. So I would ask unanimous consent to pass over the bill for right now.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Well, I don't know. I kind of like the bill. I don't know if I want all these amendments and things but I hate to...well, that is it but maybe we could pass over the amendments.

SENATOR DeCAMP: Would they withdraw the amendments for right now because the final form they are going to reach can be put on on Final or any other time and nothing is going to happen anyway for awhile. Why don't you just hold them. I know the natural gas boys are concerned. I just talked to them, some other people are. At least do her up right if you are going to do it.

SENATOR CLARK: Were you asking a question (interruption)?

SENATOR DeCAMP: Senator Lowell Johnson, would he just agree to withdraw his for awhile and get together with some people?

SENATOR CLARK: Senator Johnson.

SENATOR L. JOHNSON: Mr. President, I so agree to withdraw or withhold my amendment and Senator Sieck's at this time.

SENATOR CLARK: I would doubt very much if you could withdraw the amendment. It has been amended. Senator Beutler amended it. If everyone would agree to it, then we could withdraw it. Senator Chambers.

SENATOR CHAMBERS: Why don't I withdraw my amendment to his amendment and we just vote his amendment down. Then it won't make any difference, will it?

SENATOR CLARK: How many amendments have you got up here, two more? Do you have one for Senator Vickers? Do you

January 27, 1982

LB 347, 198, 454, 592,  
239, 618

want to withdraw yours? All right. Senator Chambers, do you withdraw yours? All right. Those two are withdrawn and we are back to the original amendment as amended. Is there anyone that wants to talk?

SENATOR L. JOHNSON: Mr. President, on behalf of Senator Sieck and myself we would withdraw our amendment at this time.

SENATOR CLARK: Is there any objection to Senator Johnson withdrawing the amendment as amended? If not, so ordered. Now we are back to the original bill. Do you have any further amendments on the original bill?

CLERK: I have nothing further, Mr. President.

SENATOR CLARK: Senator Kilgarin, do you want to move 347? Maybe we will get one bill off of here before noon.

SENATOR KILGARIN: I move to advance LB 347.

SENATOR CLARK: You all heard that. All those in favor say aye, opposed nay. The bill is advanced. Senator Johnson, would you like to adjourn us until tomorrow morning at nine o'clock after the Clerk reads in.

CLERK: Mr. President, committee on Revenue gives notice of hearing for February 1, 2, and 3.

Senator Warner would like to print amendments to LB 198; Senator Carsten and Warner would like to print amendments to LB 454; Senator Lamb to print amendments to LB 592; Senator Vickers would like to print amendments to LB 239; and Senator DeCamp would like to print amendments to LB 618.

That is all that I have, Mr. President.

SENATOR CLARK: Senator Johnson.

SENATOR L. JOHNSON: Mr. President, I move that the body stand adjourned until 9:00 a.m. tomorrow morning.

SENATOR CLARK: You heard the motion, all those in favor say aye, opposed nay. We are adjourned until tomorrow morning at nine o'clock.

Edited by:

Marilyn Zank  
Marilyn Zank

LR 209  
LB 229, 264, 309, 347, 403,  
418, 423, 490, 492, 542, 563-66,  
572, 600, 613, 635, 669

February 1, 1982

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Chaplain.

DR. ROBERT PALMER: Prayer offered.

PRESIDENT: Roll call. Have you all recorded your presence? Record the presence, Mr. Clerk.

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

PRESIDENT: Quorum being present, are there any corrections to the Journal?

CLERK: Mr. President, on page 480, line 3, strike the word "approved" and insert the word "adopted".

PRESIDENT: All right, the Journal will stand as corrected. Any other messages, reports or announcements?

CLERK: Mr. President, your committee on Public Works whose Chairman is Senator Kremer to whom was referred LB 613 instructs me to report the same back to the Legislature with the recommendation it be indefinitely postponed; LB 600 indefinitely postponed; and LB 669 advanced to General File with committee amendments attached. That is signed by Senator Kremer. (See page 485 of the Legislative Journal).

Mr. President, Senator Kahle would move to place LB 635 on General File notwithstanding the action of the Public Health and Welfare Committee. That will be laid over.

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 229 and find the same correctly engrossed; 264, 309, 347, 403, 418, 423, 490, 492, 542, 563, 564, 565, 566, and 572 all correctly engrossed.

Mr. President, I have an Annual Report from the Nebraska State Board of Landscape Architects. That will be on file in my office.

Mr. President, LR 209 is ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LR 209.

CLERK: Mr. President, I have a report from Public Works

February 3, 1982

LB 309, 347, 403, 418,  
423

CLERK: (Record vote read. See page 518, Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The Clerk will read on Final Reading LB 347.

ASSISTANT CLERK: (Read LB 347 on Final Reading.)

SPEAKER MARVEL: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 347. Record.

ASSISTANT CLERK: (Record vote read. See page 519, Legislative Journal.) The vote is 46 ayes, 0 nays, 1 excused and not voting, 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The Clerk will read LB 403.

ASSISTANT CLERK: (Read LB 403 on Final Reading.)

SPEAKER MARVEL: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 403. Record the vote.

ASSISTANT CLERK: (Record vote read. See page 520, Legislative Journal.) The vote is 46 ayes, 2 nays, 1 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. Next bill, LB 418.

ASSISTANT CLERK: (Read LB 418 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

ASSISTANT CLERK: (Read record vote. See pages 520 and 521, Legislative Journal.) The vote is 45 ayes, 3 nays, 1 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The next bill, LB 423.

ASSISTANT CLERK: (Read LB 423 on Final Reading.)



February 4, 1982

LB 32, 69, 192, 198, 229, 231, 239,  
263, 264, 270, 309, 347, 370, 403,  
418, 423, 431, 448, 449, 490, 492,  
511, 542, 563-66, 572, 592

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The opening prayer will be given by Pastor Glenn Frazier of the Antelope Park Church of the Brethren.

PASTOR FRAZIER: Prayer offered.

SPEAKER MARVEL: Roll call. Please record your presence. Will you please record your presence? Senator Cope and Senator Warner, would you please record your presence? Record.

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

SPEAKER MARVEL: Do you have anything to read into the record?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 69 and find the same correctly engrossed; 192, 198, 231, 239, 263, 370, 431, 448, 449, 511 and 592 all correctly engrossed. (See pages 540 through 544 of the Legislative Journal).

Mr. President, LBs 32, 229, 264, 309, 347, 403, 418, 423, 490, 492, 542, 563, 564, 565, 566, and 572 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign engrossed LB 32, engrossed LB 229, engrossed LB 264, engrossed LB 309, engrossed LB 347, engrossed LB 403, engrossed LB 418, engrossed LB 423, engrossed LB 490, engrossed LB 492, engrossed LB 542, engrossed LB 563, engrossed LB 564, engrossed LB 565, engrossed LB 566, engrossed LB 572. We are down to item #4, motions, and the first motion concerns LB 270.

CLERK: Mr. President, LB 270 was last considered by the Legislature January 27th. At that time Senator Barrett offered a motion to indefinitely postpone the bill. That motion prevailed. Subsequent to that action, Senator Cullan offered a motion to reconsider the body's action to indefinitely postpone LB 270. That motion is found on page 450.

SPEAKER MARVEL: The Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature,

February 10, 1982

LB 264, 309, 347, 403, 418, 542  
563-66, 572, 579, 642, 659, 677  
703, 705, 718, 719, 722, 724,  
764, 774, 778, 779, 797, 852,  
879, 606, 32, 229, 490, 492

SPEAKER MARVEL PRESIDING

RABBI BISMAN: Prayer offered.

SPEAKER MARVEL: Item #2, roll call. Please record your presence. Record your presence. Pat, do you want to record.

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

SPEAKER MARVEL: Do you have anything under #3?

CLERK: Mr. President, I have several items. First of all I have a reference report referring LR 218 to the Banking Committee for public hearing.

Mr. President, a communication from the Governor addressed to the Clerk. (Read communication re: 264, 309, 347, 403, 418, 563, 564, 565, 566 and 572 as found on page 613 of the Legislative Journal.)

A second communication. (Read re. LB 542.) And a third, Mr. President, from the Governor addressed to the Clerk. (Read re. 32, 229, 490 and 492. See pages 613-614 of the Legislative Journal.)

Mr. President, your committee on Education whose chairman is Senator Koch reports LB 642 advanced to General File; LB 774 advanced to General File; LB 797 advanced to General File with amendments. Those are signed by Senator Koch.

Your committee on Public Works whose chairman is Senator Kremer offers a corrected statement to LB 852. (See pages 614-615 of the Legislative Journal.)

Mr. President, your committee on Government, Military and Veterans Affairs whose chairman is Senator Kahle reports LB 879 advance to General File with committee amendments attached. That is signed by Senator Kahle. (See page 615 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 606 and recommend that same be placed on Select File; 579 Select File; 703 Select File with amendments; 705 Select File; 718 Select File; 719 Select File; 724 Select File; 677 Select File; 722 Select File with amendments; 659 Select File; 764 Select File with amendments and 778 Select File with amendments and 779 Select File with amendments, all signed by Senator Kilgarin as Chair. (See pages 615-616 of the Legislative Journal.)