

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....

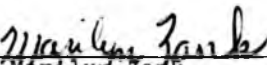
SPEAKER MARVEL: It will be in the Journal?

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

April 1, 1981

LB 5, 40, 261, 335, 353,  
428.

SPEAKER MARVEL: Meanwhile in the south balcony from Senator Dworak's District, 49 students, 4th, 5th, 6th Grades, from Humphrey Public School, Humphrey, Nebraska, Mrs. Debbie Trabert, Miss Nancy Gallop, Miss Mamie Anderson are teachers. In the south balcony, will you raise your hands so we can see where you are?

CLERK: Mr. President, Senator Richard Peterson voting yes. Senator Wagner voting yes. Senator Goodrich voting yes.

SPEAKER MARVEL: Okay, record the vote.

CLERK: 31 ayes, 8 noes on the motion to reconsider, Mr. President.

SPEAKER MARVEL: All provisions relative to procedure having been complied with, the question is, shall LB 5 pass? All those in favor vote aye, opposed vote no. 30 votes. Have you all voted? Have you all voted? Senator Beutler. Record the vote.

CLERK: (Read the record vote as found on page 1244 of the Legislative Journal.) 30 ayes, 10 nays, 6 excused and not voting, 3 present and not voting, Mr. President.

SPEAKER MARVEL: The motion is carried. Do you have some items to read in?

CLERK: Yes, sir, I do. Mr. President, your committee on Judiciary whose Chairman is Senator Nichol reports LB 428 to General File, and LB 335 to General File with amendments, and 353 General File with amendments, all signed by Senator Nichol. (See pages 1244 and 1245 of the Legislative Journal.)

The Appropriations Committee will meet in Executive Session today upon adjournment in Room 1003.

Mr. President, Senator Wesely would like to print amendments to LB 261 in the Journal. (See page 1245 of the Journal.)

SPEAKER MARVEL: I would like the attention of the Legislature, if I could. Yesterday afternoon after rather extensive debate on LB 40 the time ran out and, therefore, it is the judgment of the Chair that the time for that particular bill should be completed. Some of you have questions about the way the priorities are set. I welcome you, first of all, to visit the office and

SPEAKER MARVEL: The motion is the advancement of the bill as explained by Senator Goll. All those in favor of the bill advancing vote aye, opposed vote no. Record. There is a little problem in trying to figure out why you would vote no on your own bill. Have you all voted? Okay.

SENATOR GOLL: Mr. Speaker, may I have only three or four seconds to say that I certainly thank my fellow legislators for the fine vote of confidence in this beautiful piece of legislation. Thank you very much.

SPEAKER MARVEL: The motion is the advancement of the bill. Record.

CLERK: 33 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The bill is advanced. The next bill is LB 335.

CLERK: Mr. President, LB 335 introduced by Senator Marsh. (Title read.) The bill was read on January 19 of last year. It was referred to the Judiciary Committee for public hearing. The bill was advanced to General File. Mr. President, there are committee amendments pending by the Judiciary Committee.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Speaker, members of the Legislature, before I start on the committee amendment, Senator Goll, I wanted to let you know that Senator Labeledz wants to know if she is a fellow? As far as the committee amendments on LB 335 are concerned, as originally drafted LB 335 would establish new procedures for dealing with abuse, neglect, and exploitation of adults. It became rather obvious at the public hearing as the bill was very comprehensive in dealing across the board with all types of abuse cases, that much more study was required before the committee could act favorably on the bill of this nature. Senator Marsh proposed several amendments which would strike major portions of the original draft and it would simply include in the current abuse statutes disabled persons over eighteen years of age and all persons over sixty years of age. The committee felt that this was a legitimate first step in this area and acted favorably upon these amendments. Amendments brought to the committee by Senator Marsh were acted favorably upon by the committee and are the committee amendments. I would move for the adoption of the committee amendments.

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LB 335

SPEAKER MARVEL: The motion is the adoption of the committee amendments. Is there any further discussion? All those in favor vote aye, opposed vote no. Record.

CLERK: 27 ayes 0 nays on adoption of the committee amendments.

SPEAKER MARVEL: The motion is carried. The committee amendments are adopted. Senator Marsh, do you wish to explain the bill?

SENATOR MARSH: Yes, thank you very much, Mr. Speaker. I would like to give a little historical background. Right now there are certain segments of the adult population who are covered by protective legislation. Right now those population persons fall in the category of disabled or incompetent adults. There are other adults who really are not incompetent or who are not disabled who sometimes need the assistance. We have clarified the age group because we are not trying to intrude into the area of spouse abuse. That is already covered in other sections of our law. That is already funded under a different section of the law. We are now trying to separate the child abuse legislation and the adult population abuse. That is the purpose of LB 335. This also establishes the adult protective services registry rather than having the adults and the childrens reporting process be in the same file. They are different kinds of populations. They should not be in the same general category which has been true since 1973. At the public hearing we had some opposition to the bill by the Press Association, by physicians, by attorneys wanting to be exempted from its provisions and I have promised that I will introduce a piece of amendment on Select File and that will be printed in the Journal so you have an opportunity to see it first. Many seniors who actually are not incompetent or disabled are frail or dependent upon others and may be subject to abuse or neglect. The Department of Welfare has had 108 reports in the first half of the year, of last year, and many of those victims really cannot be served under our current legislation. Therefore there is a need and I expect that each one of you has been contacted by someone from the Silver-Haired Legislature. This has been one of their top priority bills. There has been a great deal of support across the State of Nebraska from many persons who work with this age group in various communities. I urge your support for advancing LB 335 to Enrollment and Review.

SPEAKER MARVEL: Any further discussion to the bill? Senator Landis, your light is on.



SENATOR LANDIS: Mr. Speaker, members of the Legislature, I am looking at page 9 of the white copy of the bill that is in the red-backed bill book and although I find myself supportive of the intent of LB 335 and supportive of the idea of the adult protective services act, I frankly have to say that the language on page 9 between lines 16 and 24 give me some cause for a concern. This language exists presently in the law for minor children and it seems to me that it is a very reasonable thing to draw up for children because there you are talking about punishment. You also have the need for clothing, shelter and care. However, the language that disturbs me occurs in line 20, 19 and 20. "(a) Placed in a situation that endangers his or her life or physical or mental health;" I would remind the body this is a criminal penalty and what we do in this instance is describe the circumstances under which an individual in the event they act in contravention to that language are subject to criminal penalty and I simply alert the body that I have difficulty understanding what is embodied by endangering the mental health of a person over sixty years of age. That language is ambiguous enough to me not to give an individual clear notice of the wrongs that they may be about to commit in handling a parent or a grandparent in dealing with them. I do not intend to amend the language at this stage. I do not intend to vote against the language at this stage. I want to draw to this body their attention to my concern that this language is overly broad in the context of those over sixty years of age and I am going to be reflecting on this question between now and Select File. It is possible that I will be offering narrowing language because I am concerned that the law when it creates a crime define the circumstances well enough that an individual who goes out in the world has notice that they can't perform certain kinds of acts and that notice I think is important in criminal law. This is a piece of criminal law, and if you tell me I may not endanger the mental health of someone else without committing a crime, I want to know what those circumstances are and I don't find that in the law and that disturbs me. I intend to vote for LB 335 at this stage. In the event others share my concern, I hope they will talk to me about it and perhaps we can find some language that will be somewhat narrower or more descriptive of the circumstances that we seek to outlaw by the passage of LB 335.

SPEAKER MARVEL: Senator Clark.

SENATOR CLARK: Mr. President, members, I would like to ask Senator Marsh a question.

SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Yes, I will be glad to try to respond to Senator Clark.

SENATOR CLARK: Senator Marsh, why did the Nebraska Bar Association, American Medical Association, and the rest of these people oppose this bill? Can you explain that to us?

SENATOR MARSH: I did try to earlier, Senator Clark, but I will go over that again. Their opposition to the bill was that they did not wish to have their client-lawyer relationship or their physician-patient relationship infringed upon in any manner and that is why the amendment is going to be offered on Select File and which will be printed in the Journal so that we can have it in front of us to discuss and that is why it has been held up this long, Senator Clark, since this was introduced last year and this is the compromise amendment which will be offered on Select File.

SENATOR CLARK: Well, I certainly am not against the bill. I am one of them that want to be protected at my age. All I am wondering is why would they oppose it and I appreciate your answer. Thank you.

SENATOR MARSH: Thank you very much. Is there anyone else who wishes to speak, Mr. Speaker? I would like to respond in some manner to Senator Landis to say that, Senator Landis, there are some adults who currently are covered under state law and to my knowledge there has not been a problem with the section you drew to the attention of the Legislature today. I have met with a number of groups who have been involved with the legislation we are amending by LB 335. I have made a number of inquiries: Have any problems developed with the implementation of the legislation which has been on the books since 1973? Has it caused a problem for any of the persons who are working in this field? And to my knowledge, sir, there have not been any problems which have been shared with me and I have made a concerted effort to see if there were some additional changes that needed to be made because of problems which had developed, and so far, I have heard of none. The Silver-Haired Legislature apparently did a similar kind of thing across the state with their constituency. So if you do discover something, I would be very glad to work with you on it. Thank you very much. With that I move for the advancement of LB 335.

SPEAKER MARVEL: Senator Hefner, we are speaking to the bill itself.

SENATOR HEFNER: Mr. President, members of the body, I didn't get a chance to follow your presentation, Senator Marsh. I am sorry about that. Do we really have a lot of abuse to adults and could you cite me some examples or cases?

SENATOR MARSH: Yes, sir, and thank you for asking. I didn't know how much time people wanted to spend on this but this was documented in February of 1980 and for obvious reasons I will not use names but a boarder got a woman who was visually impaired, also with limited education, to sign a paper which the person who was signing thought was for the food stamp program. In fact the paper was a deed to her own property. The perpetrator then threw the woman with the impaired vision out of the house, threw all her belongings out and left the woman with nothing. It is very difficult to get attorneys to work in that particula case particularly if it is a family situation without having LB 335 on our books. If you are interested in hearing more, I have case histories I would be glad to share. A daughter who came to live in the home of her mother, the mother's home where the mother had lived all her life, and then the daughter put the mother in an upstairs bedroom because then she was out of sight and not such a bother. Even the other children in the home, and these are adult children I am talking about, were not allowed to go up and visit their mother. The daughter said, "She doesn't want to have company". Well, it wasn't the mother who didn't want to have company, it was the daughter who didn't want the others to see the condition that she had forced her mother to live in, not allowing her to have a change of linens on the bed, not allowing her to have her wastebasket emptied until it was overflowing, and these are the kinds of conditions that unfortunately are reported in the state.

SENATOR HEFNER: Thank you, Senator Marsh. One other question, now are these abuses coming from all over Nebraska, are they coming from the rural areas or from the urban areas? Now in my particular legislative district I just haven't heard of too many of these abuses or I haven't heard of any.

SENATOR MARSH: I cannot say because I do not have the records in front of me whether there are any specific ones which have come from your particular area but these reports are coming from both urban, small town and rural areas. They are not exclusive to any one economic category. Low income, middle income, and in one instance, high income still had cases of adult abuse. Perhaps you have seen some of the national television programs recently which have

pointed out the large number of cases which are coming to light because we have not been aware of them. We simply have said, "Oh, that is a family situation", and when an adult would say, "I am being mistreated", people would just simply think their feelings had been hurt and so they were saying something to get back at a younger daughter or a younger son. Now they are discovering that is not true.

SPEAKER MARVEL: Senator Hefner, you have one minute left.

SENATOR HEFNER: Thank you, Mr. Speaker. I think that Senator Marsh has brought up some good examples and, therefore, I am going to support the bill.

SPEAKER MARVEL: Senator Higgins, do you wish to be recognized, and then Senator Kahle?

SENATOR HIGGINS: Yes, thank you, Mr. Speaker. I want to speak to the amendment as regard to the question Senator Hefner asked. Senator Hefner, I spent the entire spring, summer, fall and right up until we came to this Legislature doing a study on nursing homes and I have a bill in to correct some of the abuses. I found that in the rural areas the nursing homes give very good tender loving care, more than we do in the metropolitan areas, part of the reason is because everybody knows everybody. But if you want to know if there are abuses of the elderly, I am going to give you one that I will never forget as long as I live. When my mother was in Eppley Care Center after she had a stroke that paralyzed her on one side, and she was there for therapy or she would never have been there, she was in excruciating pain one day. She begged the nurses and the doctors, anybody, please call her doctor. Would they please call one of her daughters? The phone was within arm's reach and she begged them to hand her the phone so she could call me or my sister or her doctors. The nurse's aides, the nurses, none of them would hand my poor mother the phone. Thank God I went to see her that night at about nine o'clock when I got out of the Legislature. There is no excuse for that and the American Bar Association being opposed to this bill, I am going to take that as a personal affront to all the elderly doing it under the guise of confidentiality. We are talking about bucks, American Bar Association, and I am talking about people and so is Senator Marsh. If the American Bar Association wants to oppose something that is going to protect the elderly, they are not only going to fight Senator Marsh but they are going to have Senator Higgins, and believe me, they won't forget it for three years. Thank you, Senators.

SPEAKER MARVEL: Senator Kahle. Can you hold just a moment while I introduce some guests and then we will come right back?

SENATOR KAHLE: Certainly.

SPEAKER MARVEL: In the North balcony from Senator Fowler's District it is my privilege to introduce 26 Fourth graders from Beattie Elementary School and three teachers. Will you please indicate your presence so we can welcome you to the Unicameral. Senator Kahle.

SENATOR KAHLE: Mr. Speaker, members, first I think I should ask for some clarification from Senator Marsh. Is Article 4, Section 1 still in the bill?

SENATOR MARSH: Excuse me, sir, in the white copy?

SENATOR KAHLE: Well, in my book the first one is green and the rest of them are white but I think it is the same...

SENATOR MARSH: Please give me the number again, sir.

SENATOR KAHLE: Section 1, Article 4. It reads this way, "(4) Neglect shall mean that an individual is living under such circumstances as not to be able to provide for him or herself or is not being provided with services necessary to maintain physical and mental health, and that the failure to receive such necessary services impairs or threatens to impair his or her well-being;" is that still in there?

SENATOR MARSH: Yes, sir, it is.

SENATOR KAHLE: I am not so sure I am going to object to this but I did have a situation where a lady from a real small community wrote to me and complained that she was not receiving the basic necessities of life from the Welfare Office or the Community Action Program that was serving that area, and after some investigation, I found out that she was probably right. So I suggested that perhaps she should think about moving to a care home or some other facility and she sent my name into the ombudsman complaining that Senator Kahle had insisted that she had to be placed in a care home or some other situation. And luckily I kept the letter in which I didn't say that at all, I just suggested that maybe it was time she should look into that kind of a situation so I got off the hook. But I guess if this bill should pass and a person really went to court, who would be responsible for this service that we are saying they have to be provided in section (4)?

SENATOR MARSH: Presumably, Senator Kahle, it would be a family member. If the individual is not able to remain in their home, it probably would be a decision if a neighbor would report the situation where the Department of Welfare would need to be the decisionmaker in that case if the individual could not make that kind of a decision for their health and welfare, then the person, someone else but it would have to be through a court procedure. It would not be someone just moving in to do it.

SENATOR KAHLE: I think this...we have some very independent individuals out there and they would rather starve than have somebody tell them what to do and I guess that is where I find maybe we might have a problem.

SENATOR MARSH: Well, let's give it a try. You know I will try and help you change something if it is not but this is a piece which apparently is desired by many persons across the State of Nebraska. The Silver-Haired Legislature has discussed this for two years in a row. It was top priority last year for them and it remains top priority after their second Silver-Haired Legislature meeting to have this in its current amended form for they were supportive of the committee amendments as you well know.

SENATOR KAHLE: Thank you, Senator Marsh. I wanted to bring this up because I don't think it is a clear-cut issue that this is going to solve all of the problems and that is the only reason I brought it up because you are infringing upon the freedom of those people that are in abandonment. Even though they may cry for some help, they are not about to be told what to do. Thank you.

SENATOR MARSH: Am I closing?

SPEAKER MARVEL: Senator Pirsch, your light was on. Do you wish to speak?

SENATOR PIRSCH: Thank you, Mr. Speaker. I just wanted to tell the body and Senator Kahle that those sections had been struck, Sections 1 through 10 in the committee amendments, 1 through 11 in the committee amendments and Section 15, but I would have a question of Senator Marsh, if she will yield?

SENATOR MARSH: Thank you, Senator Pirsch.

SENATOR PIRSCH: Senator Marsh, on the statewide toll free number, will there be established a separate adult abuse on top of the child abuse?

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LB 335, 353, 840 - 845

SENATOR MARSH: It will be kept in separate file now rather than having them placed together. It will be the same number as this that you are referring to, the emergency number, so there is not duplication of services.

SENATOR PIRSCH: It will be the same number, and as I understand it, they are reporting these on the child abuse hot line that we now have established.

SENATOR MARSH: That is correct.

SENATOR PIRSCH: Will this remain the same number or will they add another?

SENATOR MARSH: No. We need to have one number that is known throughout the state for those emergency services. We will keep them in separate files. They will be treated separately at that end but the response is through an emergency number, not to try to duplicate services at our state level. To make our state dollars go as far as they possibly can go, we need not to be adding but combining services wherever necessary and there are plans, as I understand it, to incorporate even other things into that emergency number. Thank you.

SENATOR PIRSCH: Thank you. I just wanted to clarify that.

SPEAKER MARVEL: The motion is the advancement of the bill. All those in favor of that motion vote aye, opposed vote no. The advancement of the bill. Have you all voted? Clerk, record the vote.

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

SPEAKER MARVEL: Motion carried. Bill is advanced. Yes, the Clerk has some items on the desk.

CLERK: Mr. President, a new bill, LB 840 (title read); LB 841 (title read); LB 842 (title read); LB 843 (title read); LB 844 (title read); LB 845 (title read).

Mr. President, I have a report of registered lobbyists for January 9 through January 14.

And LR 204 and LR 205 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 LR 204; LR 205. Next order of business, LB 353.

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LP 208, 210A, 335, 824,  
846, 36

education, they are accredited, or other kinds of things, they are still accredited. So when that parent goes to move, he is going to have to prove there is indeed a very special needs that they can prove in order to get that favorable decision to do that job. And this is very specific, Senator Remmers. I would be happy, and Mr. Siefkes, we will be happy to sit down and visit with you. Move the bill, as Senator Beutler said. If there is some things that we feel reasonable, we will make those changes and I assure you of that. Thank you. That is my closing. I would move for the advancement of LB 208 as amended to E & R initial.

SENATOR CLARK: The question is the advancement of LB 208 to Initial. All those in favor vote aye, all those opposed vote nay. Record the vote.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. Next order of business is 36E. The Clerk would like to read in.

CLERK: Mr. President, Senator Marsh would like to print amendments to LB 335 in the Journal.

Mr. President, I have an announcement from the Speaker moving LB 359 from Passed Over to General File.

Mr. President, a new bill, LB 210A (read title); a new bill, LB 846 (read title). (See pages 307, 308, Journal.)

Your committee on Miscellaneous Subjects gives notice of hearing in Room 2230 for February 18 and 19. Signed by Senator Hefner as Chairman.

Mr. President, Senator Kilgarin asks unanimous consent to add her name to LB 824 as cointrouducer.

SENATOR CLARK: No objection, so ordered.

CLERK: Mr. President, LB 36 was a bill introduced by the committee on Agriculture and Environment. (Title read.) The bill was first read on January 8 of last year. It was referred to the Ag and Environment Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Ag and Environment Committee.

SENATOR CLARK: Senator Schmit, on the committee amendments.



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LB 36, 208, 212, 263, 267, 335,  
353, 370, 402, 448, 449,  
450, 525

LB 448 and recommend that same be placed on Select File with amendments; LB 449 Select File with amendments; LB 450 Select File with amendments; LB 263 Select File with amendments; LB 212 Select File with amendments; LB 370 Select File with amendments; LB 335 Select File with amendments; LB 353 Select File; LB 208 Select File with amendments; LB 36 Select File; LB 402 Select File; LB 525 Select File with amendments, all signed by Senator Kilgarin. (See pages 388-391 of the Legislative Journal.)

SENATOR CLARK: We are now ready for item #5, LB 267.

CLERK: Mr. President, LB 267 introduced by Senator Richard Peterson. (Read title.) The bill was read on January 16 of last year, referred to the Public Health and Welfare Committee for public hearing. The bill was advanced to General File with committee amendments attached, Mr. President.

SENATOR CLARK: Senator Wesely, do you want the committee amendments?

SENATOR WESELY: Yes, Mr. President, members of the Legislature, this bill was referred to the Public Health Committee, was heard last year and there was a concern at that time about the fact that it applied only to Dental Review Committee and the feeling was that by just limiting it to the Dental Review Committee there might be some special legislation constitutionality problems and so we thought that the concept was worthy of application across the board to all peer review committees and so the committee amendment would strike the fact that this is specifically dealing with the Dental Review Committee and make it applicable to all Nebraska peer review committees and again the concept is this in LB 267 that proceedings before a peer review committee would still take place and function as they have before. The question comes when court action is taken and some action is taken before a dentist or anybody associated with a peer review committee. They cannot then go to the committee records and use the committee action against the person or for the person for that matter who is being brought to court and being contested in court. So that you could still use materials and all that that would be brought before this peer review committee but the actual work of the committee would be kept out of the court process and decided that would be separated from the court action. That is what we are trying to do and we thought if it was applicable to dentists it ought to be applicable to others. So that is what the committee amendment does, Mr. President.

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LB 449, 450, 335

SENATOR CLARK: Record the vote.

CLERK: 25 ayes, 2 nays, Mr. President, on the adoption of the amendment. I have nothing further on the bill, Mr. President.

SENATOR CLARK: Senator Warner. The motion before the House is to advance 449. All those in favor say aye, opposed. The bill is advanced. LB 450.

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 450.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The E & R amendments are adopted.

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

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Same motion, Mr. President, to reconcile the bill with the passage of LB 249 last year. I move its adoption.

SENATOR CLARK: All those in favor of the Warner amendment to 450 will vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 26 ayes, 0 nays on the motion to adopt Senator Warner's amendment.

SENATOR CLARK: The amendment is adopted.

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

SENATOR CLARK: Senator Kilgarin, do you wish to move the bill? 450.

SENATOR KILGARIN: I move we advance LB 450.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 335.

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LB 335

CLERK: Mr. President, there are E & F amendments to 355.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 335.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The E & R amendments are adopted. The next amendment.

CLERK: Mr. President, Senator Marsh would move to amend the bill. The Marsh amendment is on page 307 of the Journal.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Mr. Chairman and members of the Legislature, I introduced the amendment for 335 at the request of persons who are representing various agencies, various interest groups who thought they would like to be removed from LB 335. However, LB 335 has been amended so it is not a separate department we are talking about for adult protection but rather the adult protection is included in the child abuse protection area. So I am going to have to let someone else speak for the amendment since I will not personally support the amendment.

SENATOR CLARK: Senator Landis.

SENATOR LANDIS: Mr. Speaker, I just want to apprise the body that I have had the bill drafter up and have prepared an amendment on another area in the bill, and when that language is drawn, I want to have it put in the Journal. The problem will be that if we move it on Select File, I will have to attempt that amendment on the Final Reading stage. Perhaps this would be a good time to have the bill passed over for two or three days if possible.

SENATOR CLARK: You want to ask unanimous consent?

SENATOR LANDIS: Well, I am not the introducer of the act and I would be uncomfortable doing something that moves this bill, that doesn't give it priority it deserves but in fact I would like to see it passed over for a couple of days so you can see the language that I have drawn.

SENATOR CLARK: Is there any objection to laying over 335? Seeing none, so ordered. That is the last bill we have this morning. Senator Nichol, would you like to adjourn us until nine-thirty, Monday morning.

February 1, 1982

LB 335, 631, 707

Mr. President, I have a set of amendments from Senator Landis, one to LB 335 and one to LB 707 to be printed in the Journal. (See pages 490 through 492 of the Legislative Journal).

Mr. President, I have notice of hearing on gubernatorial appointments from the Business and Labor Committee and that is signed by Senator Barrett as Chairman. (See page 492 of the Journal).

PRESIDENT: Ready then, Mr. Clerk, for the next bill on General File, Special Order, LB 631.

CLERK: Mr. President, LB 631 offered by Senators VonMinden, Hefner and Goll. (Read title). The bill was read on January 6th of this year. It was referred to the Revenue Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Revenue Committee.

PRESIDENT: The Chair recognizes Senator Carsten on the committee amendments. Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, with your permission I would yield the committee amendments to Senator Hefner who is prepared to handle them, Mr. President.

PRESIDENT: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I move for the adoption of the committee amendments. This is a three-part amendment. The first part provides a four-year sunset for the tax provision so that it would expire January 1st, 1986. Some of the members of the Revenue Committee felt that we should put a sunset clause on this so that we could take another look at it in 1986. The second part of this amendment would require the State Racing Commission to report to the Revenue Committee if and when other tracks would qualify for the tax preference, and the third provision of this is that it adds an emergency clause onto this bill. And the reason for this is that the Atokad racing season is scheduled to begin in April instead of May like it says in the front of your bill book. These amendments won unanimous approval of the committee and if you have any questions to these committee amendments, I would be happy to answer any questions you may have. I move for the adoption of the committee amendments, Mr. Chairman.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 335.

CLERK: Mr. President, your committee on Revenue whose chairman is Senator Carsten instructs me to report LB 467 advance to General File with committee amendments attached; LB 770 indefinitely postponed. That is signed by Senator Carsten. (See pages 630-632 of the Legislative Journal.)

LB 807 is advanced to General File with committee amendments attached by the Urban Affairs Committee. That is signed by Senator Landis. (See pages 632-634 of the Journal.)

Banking Committee offers a confirmation report on gubernatorial appointments.

Mr. President, LB 335, the E & R amendments were adopted on January 29 of this year. At that time the bill was laid over. I now have an amendment pending by Senator Marsh, Mr. President, that is found on page 307 of the Journal.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Thank you, Mr. Chairman and members of the Legislature, I agreed with the persons who opposed the legislation that I would bring the amendment to the body. I cannot personally support the amendment and I would like to read from a letter. This letter happens to be from a constituent of Larry Stoney's in District 4 and she says, "I am writing you concerning your bill, LB 335 and more specifically the amendment which would remove doctors, lawyers and clergy from reporting cases of neglect and abuse. I oppose this amendment. I do not oppose LB 335 which protects adults especially the elderly, disabled and handicapped from abuse and neglect. However, to remove anyone from the liability to report these incidents will make our reporting law ineffective. We cannot help adults if we have no way of obtaining the information on abuse and neglect."

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman and members, I rise to oppose the amendment that we are speaking to where we are going to allow supposedly immunity to about four classes of professional people. It reminds you only, and I'll quote a Dr. Paul Nelson of Omaha who has been very interested in child abuse who states and I quote directly. Dr. Nelson, Omaha doctors in child care and abuse said, "The reporting requirement has worked well and hasn't hurt anyone and for us to say that doctors, lawyers and clergymen and others should be

immune is a step backward. First of all I remind you that under present law there is immunity for any of these people in terms of reporting an incident of abuse when it is very obvious that there has been abuse. Let me remind you also that teachers fall in this same category and I remember the argument went through before. They see abuse and they can report it and they have an immunity even though it is reported. So I think for us to say we're going to provide immunity, these people do not have to report, then for all practical purposes you've destroyed the purpose of the bill and senior citizens have talked to me and said, if you're going to do this then you might just as well kill the bill because it has no need. There will be no remedy that will be forthcoming. So even though I guess I've tried to understand these professions, I would say to you that under the law and I quote to you under the section of law from 28-716: "A person participating in an investigation or making a report immune from liability civil or criminal. Any person participating in an investigation of making a report pursuant to provisions of Section 28-710 to 28-717 or participating in a judicial proceeding resulting therein shall be immune from any liabilities civil or criminal that might otherwise be incurred or imposed except for maliciously false statements." So it is in law. They have it. Why are they now trying to tell you there is nothing to protect them at all? And I submit to you that is false. So I would hope we would vote down the Marsh amendment. Now Senator Marsh has accepted this in hopes of saving the bill and I think this body ought to be straightforward and say, after all, who observes abuse more than anyone else and I submit to you it is generally doctors, whoever they might be, attorneys, clergymen and others. Therefore, they should remain in the bill and if we are going to make it meaningful, let's keep it that way. So I suggest that we should strike the Marsh amendment and go on with the bill and report it to Final Reading.

SENATOR CLARK: Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I support the Marsh amendment. If, as Senator Koch indicates, the very similar protections are already in law it certainly shouldn't cause any problem to just restate them here. I guess the area that I am most concerned about is the area of clergymen and primarily in the area of the seal of the confessional. I think this is a basic religious tenet and I think any protection to protect that very individual and very personal right is prudent by this body. I cannot vote for this bill without this wording and this amendment. If, as Senator Koch indicates, it is already provided for, we're going no farther than what is already established in statute then I

certainly would hate to see this bill jeopardized over a point that is already provided for. I think in this area with the type of things we are talking about that are so important that we can't be too cautious. We can't be too careful and so I would strongly support Senator Marsh's amendment. I think it is critical, anyway it is critical to this senator as to his disposition on this particular piece of legislation.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I think I support the amendment. Now what I think it says is this, as long as a clergyman, a doctor or a lawyer are dealing with a client they are not required to report child abuse or whatever. But if they are not in the line of employment, if they are not in the line of their duty as a minister or a priest or a doctor or lawyer, they should report it just as the rest of us do. I think it is a pretty good amendment.

SENATOR CLARK: Senator Kahle.

SENATOR KAHLE: Mr. President, members, maybe someone can help me out but I am confused as to what we are talking about here. I thought that certain professions had what we called professional immunity no matter what. And now can someone tell me does this bill abrogate that situation? I don't see how we can do that. I understood that this bill was more to encourage those people to come forward on their own but that we could not force them to divulge these things if they did not want to. Now Senator Marsh or whoever is promoting the amendment or maybe some of the attorneys in the group, I wish you would enlighten me.

SENATOR CLARK: Senator Marsh, do you wish to answer the question?

SENATOR MARSH: Senator Kahle.

SENATOR KAHLE: Senator Marsh, what I was asking is certain professions have professional immunity from divulging certain things. Do they not have that now and does this bill....?

SENATOR MARSH: No, they do not under our current law. Under the abuse statutes of the State of Nebraska all persons including physicians are required to make reports and I have a very interesting statistic on why that has been working well and why it is in. 90% of all physicians reports of suspected abuse are substantiated whereas 30 to 40% of other suspected cases of abuse, in fact, turn out to be abuse but a physician is in such a particularly sensitive spot and that physician has both civil and criminal protec-

tion in our law now and it has been on our books since 1973 and has been working well in the State of Nebraska for the protection of the children and the adults who currently are covered.

SENATOR KAHLE: Let me ask you this question then. If we do not pass your amendment, do they lose that immunity?

SENATOR MARSH: No, the law will continue as it is if the amendment is not adopted. Thank you.

SENATOR KAHLE: Okay, thank you.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I'm going to support the amendment. It is my understanding Senator Marsh is opposed, she is offering but you are opposed. Okay, and I say, what I am going to say next in all sincerity, I believe if you don't adopt the amendment you will have effectively have killed the bill. And I say that having talked to different groups both in this Legislature and outside they will do everything they can to kill the bill. There are certain things held sacred by certain people, priests, the Catholic secret of the confessional, whatever you want to call it, the lawyer-client privilege, so on and so forth. I believe that the old story you should take the first step instead of trying to run the whole mile. You want to set up a system to start dealing with abuse of the elderly and the legislation can do that and to Senator Kahle, I would urge you to read the language which says, "...blah, blah, blah, any person shall report." There is no "mays", there is no anything. The burden is imposed upon people to actually call if they suspect. If Senator Higgins, and it is kind of vague in a certain sense because it is subjective. It is what she, Senator Higgins, may determine in her own mind to be abuse but she is obligated under the new law you would be passing to call, to report, to accuse in essence. Okay. So you have established that precedent and that standard in the law and I think you'd better be acceptable or satisfied with that. You will not get the rest. Now some of the lawyers representing the Bar Association, I'll read you the note so you'd...no big secret here. They made a point to clear up something. Professional immunity is not the issue. The issue is the confidentiality of communications from a person needing counselling to a lawyer, doctor or priest. And so Senator John needing to go to confession, let's say, which of course is a rare event but, I mean just accepting the possibility. He needs to know that confidentiality exists. Boy, you better believe he needs to know that. Anyway, that is the reason for the



exception and I guarantee you, if you really want this bill and if you want to do something to start for the first time dealing with abuses for the elderly, you'd better accept the amendment or you are tantamount to killing your own bill.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, I oppose the amendment because if you want to destroy the child abuse, the bill that we passed and if you all remember the little picture, the pictures of little Bobby I passed around, if you want more of that, then pass this amendment. I would like to read for you the law, Section 28-716: "Persons participating in an investigation or making report immune from liability, civil or criminal, any person participating in an investigation or the making of a report pursuant to the provisions of the Sections 28-710 to 28-717 or participating in a judicial proceeding resulting therefrom shall be immune from any liabilities, civil or criminal that might otherwise be incurred or imposed except for maliciously false statements." They are now protected under the law and if you pass this amendment you are going to blow the whole thing. And if you remember the child abuse bill that we passed three years ago, fell under this. It is not just elderly abuse, it is all kinds of abuse. Now who knows better about abuse than a doctor? He sees it. I know a school nurse that sees it and reports it when she sees it and a lawyer knows about it and a priest knows about it. They are protected from the law so if you want to blow the whole thing, then pass the amendment but if you want to do something for the elderly and you still want to keep the child abuse in, then defeat the amendment and pass the bill. Thank you, Mr. President.

SENATOR CLARK: Senator Fowler.

SENATOR FOWLER: Mr. President, I rise to agree with Senator Haberman on this issue. I think that to get certain professions, in fact, I'm kind of appalled at these professions really. I don't think it is such a sacred privilege that we're dealing with as much maybe as a matter of convenience but if we're talking about abuse of the elderly and then to say that physicians who are actually the ones that probably most likely, I think we really ought to talk about the physicians. The clergy and lawyers I don't think is a big concern here but if you take the physicians out of this bill those who are most likely to see a senior citizen who has been abused, and it is amazing when you talk to people who work in this area, the type of abuse that, in fact, has gone on. I think it is almost impossible to imagine that even

such a thing would exist or does exist but, in fact, and unfortunately it does and it is often in the doctor's office or the hospital that that abuse is seen. Now it is interesting that the physicians say that they should be out of it because of privilege but as Senator Haberman points out, other health providers like the nurse who is in the physicians office or the nurse who is in the hospital or an aide or an attendant or a physician's assistant, they, the medical association, does not remove them from the law so you create the situation where the nurse that has maybe observed the treatment of abuse is required by law to report it but the doctor isn't. That doesn't make sense and it is amazing to me the medical association somehow decides that doctors shouldn't have to report but everybody around the doctor should be required to report and, in fact, that would be a very awkward situation it would seem to me, if the physician feels immune from reporting but the physician's staff has to report abuse if they see it. So I think that we should defeat the amendment and perhaps clergy, there is some sort of special situation there, an immunity maybe could be provided. Attorneys, I can't imagine how many times they are going to run into these cases anyway but I think that it is more...I really question taking physicians out of this because I really think it damages any effort for us to find the problem and to require all other medical personnel, I mean the people that work around the physician to be required to report it, amazes me but then we would say that the doctor....

SENATOR CLARK: You have thirty seconds.

SENATOR FOWLER: ...is unable to do it. So I think the amendment should be defeated and I can't imagine the Nebraska Bar Association coming in and killing a bill like this simply because the physicians and attorneys weren't exempted. I just can't believe that the professional association representing the attorneys of the State of Nebraska would do such a thing and I'm sure that Senator DeCamp is exaggerating the position. That is often a lobbying tool but I can't see Larry Ruth doing that to this bill. It just seems totally out of character for him, so I would certainly oppose the amendment.

SENATOR CLARK: Senator Koch, did you wish to speak again?

SENATOR KOCH: Thank you, Mr. Chairman, I do. You know I live in a district where we have a lot of doctors. It is interesting that not one doctor called me about this particular bill and I mean when I say a lot I am talking about many. Here we are because a lobbyist believes that the

American Medical Association wants to be free of this issue. Yes, I quoted you from one of the doctors from Omaha who says that if we do this we're taking a giant step backward because if the doctor has a patient and there is a doubt in the mind that he can say to his patient, I have to report this and I want you to know it is a matter of confidentiality. The patients say, then in that case, that she is not. But otherwise a doctor in an ethical profession would report it. I can't believe the profession who says, who states that they have ethics would be in here wanting to be immune from something so serious as abuse of children or the elderly and all you have to do is read the newspapers and you know the elderly are being abused, sometimes intentionally and sometimes unintentionally. So I just believe that Senator Marsh who accepted this amendment did it hoping she could save the body of the bill and I submit to you, if we adopt this amendment the body of the bill is meaningless. Not only that but we are also jeopardizing the child abuse law Senator Haberman alluded to a moment ago in 1977. So I believe that we should strike the Marsh amendment, go on with the legislation as is because they have all the protection they need under the law unless they are maliciously falsifying a report. That is the only time there could be any retribution or any charges. I move for the striking of the Marsh amendment.

SENATOR CLARK: Senator DeCamp, did you wish to talk again?

SENATOR DeCAMP: Mr. President, members of the Legislature, now this is a pretty serious and important issue because you are deciding things in one area that obviously will be dealt with others in the future. If you can solve your problems, if you can solve problems by ordering people, ordering people in very specialized professions to disclose everything they learn in a certain type of area, in this case, the elderly, then there is no limits to how far the state can go. Now let's use a typical case, Senator Fowler, and I think it is important if you've got a few months you maybe drop over to the law school and learn what the legal profession is about. So and so is accused of a crime. So and so cannot under your system, a crime in this area let's say, abuse of the elderly or whatever, so and so can't go to a lawyer and even discuss. Let's assume they are innocent, let's assume they are guilty, it doesn't matter. That lawyer is obligated under your bill to immediately say, aha, I found out something. I run to the county attorney and say I learned this from so and so. I think you are playing with fire. Okay, if you can crack, so to speak, the confidentiality of the confessional for this area, why can't you take the confessional and make, by state law, why can't you order the priest to disclose any crimes, any offenses he is aware of? If you can do it in A area why can't you order him for everything. So you are playing with dynamite here and I suggest you adopt the amend-

ment and maintain privileged communications if you are going to maintain a system where A and B can discuss their problems, where if you are going to maintain a legal system, if you are going to maintain these things, otherwise I think you are going to discover after you adopt the amendment and advance the bill, that all heck is going to break loose and ultimately the bill is going to be killed. You are not going to in the Nebraska Legislature suspend certain portions of the Constitution against protecting incrimination rights. You are not going to destroy a centuries old tradition of the confidentiality of the confessional. You are not going to do her even though you pass a bill saying you are and about all you are going to accomplish is kill what good the bill could do. The bill does take that first step and say, well look, if Marge, the average citizen, is aware of a problem she has a duty to report it. I think that is a reasonable approach, at least at this time. To try to guarantee that there will never be any person abused by closing all these other systems, I think is awful dangerous.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Thank you, Mr. Speaker. Senator DeCamp and Senators, being a born and reared Roman Catholic, not one of the best but at least I have been exposed to Catholicism for thirteen, fourteen years of education, in my fifty years I have never known a priest to break the seal of confession but I guess as a Catholic I have to remind my Protestant friends that what a Catholic goes to confession for is to confess his sins. He doesn't go to tell about his mother and father being beat over the head. I think that I am going to have to vote with Senator Marsh on this. I hope Senator DeCamp is wrong, that without the amendment the bill won't pass but I truthfully...and I even asked Bernice a minute ago, "Have you ever heard of a priest breaking the seal of confession?" She said, "No." But I know Bernice is going to vote the opposite way of me on this amendment but remember, when Catholics go to confession and they do it very little anymore, it used to be you had to go at least once a year, now they are begging you to go every five years, but when you go to confession it is to confess your sins, not somebody else's. So if DeCamp is right that we need a yes on this to advance the bill I am going to vote with DeCamp but if we don't need a yes to keep this bill alive, then I am going to vote with Senator Marsh.

SENATOR CLARK: Senator Marsh, did you want to speak again on the bill? We have one after you.

SENATOR MARSH: Yes, thank you very much, Mr. Chairman. Senator Higgins, the law which has been in effect since 1973 has said that persons who suspected abuse would report abuse.

There has been no problem brought to me by any priest or any member of the clergy. There has been no problem brought to me or shared with me from any doctor and every doctor in the State of Nebraska has been under this legislation since 1973. There has been no lawyer who has come to say he or she had a problem because of our current legislation and there has been no member of the press to report that I spoiled a story because the current legislation says if you know of abuse or suspect abuse you have a responsibility to report. When this has been law since 1973 and no one has had a problem with it, why change it? But the reverse is true. If the amendment is adopted, then 90% of the physician reports may not be available when the doctors are no longer required to report abuse. Only those individuals who feel a very strong personal commitment would then do so and I trust that many of my physician friends would be in that category but until we had protection in our law, Senator DeCamp, until we had the protection for the doctors in the original legislation of 207 back in 19XX, we had very few reports coming from doctors. Now under current legislation 90% of their reports are validated with something being done to stop the abuse for the adult or the child. No problem has developed. Why is it necessary to suddenly change this section? You see if the amendment is adopted it reflects not only in the new section of the senior citizens but it also affects the child abuse legislation. I urge you to vote against this amendment.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: I would like to say that I disagree with Senator Higgins, which I don't often do, but as a member of the Legislature for some unknown reason and I think you probably know the reason, I have to go to confession every month and I'm sure you know the reasons why.

SENATOR CLARK: We can understand that you know.

SENATOR LABEDZ: Yes, and I admit that I go every month to confession because I go to communion on Sunday. I also agree wholeheartedly with Senator DeCamp as far as where we say in the amendment or in the bill that they "shall" report. That means that the clergy shall report and how far are we going to go with that? We just passed a shoplifting bill. If I go to confession and confess to the priest that I was shoplifting, are we going to say next that he is going to have to report that or any other crime? I certainly hope that this body will see fit to exempt the physicians, the attorneys and the clergy, especially the clergy. I am most concerned about that and definitely will not support a bill that will force the clergy to report any abuse. I think the bill as it stands is wrong. The amendment is definitely necessary and I hate to disagree with Senator Higgins but I will have to

on this because she knows that I, too, am very concerned about abuse of the elderly or the abuse of anyone, spouse abuse, child abuse, whatever. Definitely I am in favor of something being done and I, as a neighbor, notice anything in my block where either children or the elderly are abused I certainly will report it but I don't think we should force the clergy to do so. I urge the adoption of the amendment.

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

SENATOR MARSH: Senator Labedz, have you heard of any priest or any bishop or any other person who has had a problem with our current legislation the way it was written and has been on the books since 1973?

SENATOR LABEDZ: No, I have not but I certainly don't want them to be forced to report anything. As now, they use their own judgment on it.

SENATOR MARSH: I think that is the way it should continue.

SENATOR LABEDZ: I think an attorney...(both talking at once.)

SENATOR CLARK: Wait a minute, wait a minute, one at a time.

SENATOR LABEDZ: Well she is asking me a question. I am trying to answer. An attorney, a physician and the clergymen will report abuse if they see fit but they certainly should not be forced to do it by saying they "shall" report it.

SENATOR MARSH: Do you think that someone who has the best chance of finding out about the abuse should be exempted whereas you are not exempted and I am not exempted?

SENATOR LABEDZ: There must be legitimate reasons why they couldn't be. A priest in confessional should not be forced and your amendment or the bill itself says "shall". He will report it if he thinks it is necessary.

SENATOR MARSH: It is interesting because that has been the identical language since 1973 and no clergyman and no priest, no bishop has had a problem with the child abuse or the adult abuse since 1973. Why suddenly is this being thrown up as a red herring to drag across in front of the Legislature? Of all persons I respect clergy persons, I respect priests, I respect bishops and the tremendous good they have brought to our world, the leadership which they have exhibited but I have had no priest, no clergy person contact me and ask for this amendment. I've had no physician call me and ask for this amendment. I urge you to vote no on this amendment.

SENATOR CLARK: She was closing on her amendment. All those in favor of the amendment will vote aye, opposed vote nay. A record vote is requested.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Record the vote. Pardon? I think there is two or three excused.

SENATOR DeCAMP: Does it take twenty-five?

SENATOR CLARK: It takes twenty-five.

SENATOR DeCAMP: I request a Call of the House and call in votes first and if it requires more then...(Mike not on.)

SENATOR CLARK: A Call of the House has been requested. All those in favor of a Call of the House vote aye, opposed nay. The House is under Call. Record it. Call in votes will be accepted on the adoption of the Marsh amendment. We are looking for seventeen more. If anyone is in their chair please record in, please. Senator Cope. Senator Koch, thank you. Senator Beutler. Senator Goodrich. Senator Marsh, will you tell us you are here. Is Senator Chambers around? We are accepting call in votes. If we can get some order in the Legislature we will go to a roll call if you want a roll call, Senator DeCamp? Senator Duda wants to vote.

CLERK: Senator Duda voting yes, Senator Beyer voting yes, Senator Fenger voting yes,

SENATOR CLARK: (Gavel.) You are not recognized by the Chair. Senator Goodrich wants to vote.

CLERK: Senator Goodrich voting yes. Senator Higgins voting no.

SENATOR CLARK: The Clerk will record the vote.

CLERK: 25 ayes, 15 nays, Mr. President, on adoption of the Marsh amendment.

SENATOR CLARK: Senator Koch, for what purpose...?

SENATOR KOCH: Mr. Chairman, I would like to have a record vote for the Journal.

SENATOR CLARK: A record vote has been requested.

CLERK: (Read record vote as found on page 635 of the Legislative Journal.)

SENATOR CLARK: The Clerk will record.

February 10, 1982

LB 335, 375, 454, 784

CLERK: 25 ayes, 21 nays, Mr. President.

SENATOR CLARK: Motion passed. The amendment is adopted. We are going to stop the bill at this point being as it is time. We have a few things to read in and then, Senator Barrett, I want you to adjourn us until tomorrow morning. I imagine you are on Medicare now, your birthday was yesterday? Alright.

CLERK: Mr. President, Senator Newell would like to print amendments to LB 454; Senator Hoagland to print amendments to LB 375. (See pages 636-637 of the Legislative Journal.)

Mr. President, your committee on Administrative Rules reports LB 784 advanced to General File. That is signed by Senator Vard Johnson. (See page 636 of the Journal.)

Mr. President, new resolution, LR 219 by Senator Lamb. (Read as found on page 637-638 of the Journal.) That will be laid over pursuant to our rules, Mr. President.

SENATOR CLARK: Senator Barrett, will you adjourn us until tomorrow morning as a senior citizen.

SENATOR BARRETT: I would be happy to, Mr. Chairman. I move that we adjourn until tomorrow morning, February 11 at 9:00 a.m.

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 Arleen McCrory.  
Arleen McCrory



February 16, 1982

LB 259, 335, 435, 679, 714,  
725, 733, 770, 779, 781,  
805, 866, 901

Your committee on Public Health reports LB 714 advanced to General File with committee amendments; 725 advanced to General File; 781 General File with amendments; 805 advanced to General File with amendments; 901 advanced to General File with amendments; 733 indefinitely postponed; 679 indefinitely postponed; all signed by Senator Nichol.

Your committee on Banking reports LB 866 advanced to General File with amendments.

Mr. President, Senator Fowler asks unanimous consent to add his name to LB 259 as co-introducer.

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: Mr. President, Senator Schmit would like to print amendments to LB 779; Senator DeCamp to 335; Senator Landis to LB 435.

Mr. President, Senator Fenger would like to be excused Wednesday, February 17 at 10:30 a.m.

And Senator Labeledz announces a meeting of the Constitutional Revision and Recreation Committee for Wednesday morning at eight-thirty in Room 2102, Wednesday morning, 2102, Constitutional Revision and Recreation.

Mr. President, a motion from Senators Beutler and Fowler that LB 770 be placed on General File notwithstanding the actions of the Revenue Committee, and they say that is Senator Wesely and Beutler, Mr. President.

SPEAKER MARVEL: That bill will be laid over. Any other items, Mr. Clerk.

CLERK: Nothing further, Mr. President.

SPEAKER MARVEL: Okay, Senator Chronister, do you want to adjourn us until February 17th at nine o'clock?

SENATOR CHRONISTER: Mr. Chairman, I move that we adjourn until 9:00 a.m. Wednesday morning.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. We are adjourned until February 17th, 9:00 a.m.

Edited by

  
Mary K. Turner

7705

February 17, 1982

LB 259, 335, 704, 746

SPEAKER MARVEL: The motion lost.

CLERK: Mr. President, your committee on Government whose chairman is Senator Kahle reports LB 704 advanced to General File with committee amendments attached; LB 746 advanced to General File with committee amendments attached, both signed by Senator Kahle. Senator Landis would like to print amendments to LB 335 in the Legislative Journal. (See pages 729-732 of the Legislative Journal.)

Mr. President, I have a new resolution offered by Senator Labedz and Richard Peterson and others. (Read LR 224 as found on page 732 of the Legislative Journal.)

Mr. President, Senator DeCamp asks unanimous consent to add his name to LB 259 as cointroducer.

SPEAKER MARVEL: Hearing no objection, so ordered. Senator DeCamp, would you adjourn us until nine o'clock tomorrow.

SENATOR DeCAMP: I don't suppose I could talk you into sine die so we will do it until nine o'clock tomorrow.

SPEAKER MARVEL: The motion is to adjourn until 9:00 a.m. February 18, 1982. All those in favor of that motion say aye, opposed no. The motion is carried. We are adjourned.

Edited by

*L. M. Benischek*  
L. M. Benischek

February 24, 1982

LB 604, 604A, 305, 335

SPEAKER MARVEL: The motion is the Cope amendment to LB 604. All those in favor vote aye, opposed vote no.

CLERK: Mr. President, Senator Dworak requesting record vote. (Read the record vote as found on page 836 of the Legislative Journal.) 38 ayes, 0 nays, Mr. President, on the motion to adopt the Cope amendment.

SPEAKER MARVEL: The amendment is adopted. Senator Kilgarin, the motion is to advance the bill.

SENATOR KILGARIN: I move we advance LB 604.

SPEAKER MARVEL: All in favor of that motion say aye. Opposed no. The motion is carried. The bill is advanced. Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 604A.

SPEAKER MARVEL: All in favor of that motion say aye. Opposed no. The motion is carried. The bill is advanced. Under the next item, Select File, is LB 305. Senator Beutler would ask unanimous consent to pass over the bill. Is there any objection? Hearing no objection, so ordered. The next item is 335.

CLERK: Mr. President, the E & R amendments to 335 were adopted on January 29 of this year. At that time the bill was laid over. I am sorry there was an amendment from Senator Shirley Marsh that was adopted to the bill, Mr. President. There was then an amendment from Senator Landis found on page 490. Senator Landis.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Landis, do you have an amendment?

CLERK: Senator, you had an amendment on page 490 I understand you wish to withdraw. Is that right? Okay.

SENATOR LANDIS: I have a later one that is to take its place, Pat.

SENATOR CLARK: That one is withdrawn.

CLERK: Mr. President, the next motion I have is from Senator DeCamp which was to indefinitely postpone the bill. He wants to withdraw that.

SENATOR CLARK: It is withdrawn.

February 24, 1982

LB 335

CLERK: Mr. President, the next amendment I have is from Senators Labeledz and Newell.

SENATOR CLARK: Is Senator Labeledz and Newell in the Chamber? Either Senator Labeledz or Newell. Let's take the next amendment.

CLERK: The next amendment, Mr. President, is from Senator DeCamp found on page 713 of the Legislative Journal.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, the amendment is incredibly simple. It maintains existing law on child abuse and with respect to adult abuse it tries to resolve the question of who should or should not report and who would then be guilty of an offense for not reporting, or whatever, as follows: It maintains the attorney-client privilege on child abuse and adult abuse and it maintains the clergy privilege as it exists now on child abuse and adult abuse. It does compel under criminal law physicians to provide information if they have information. That is all it does. I believe it is a reasonable solution. Maybe I will respond in any closing, or to any questions raised, but I think it is reasonable.

SENATOR CLARK: Is there any discussion on the amendment? If not, the question before the House is the adoption of the amendment. All those in favor vote aye, opposed vote nay. It is the DeCamp amendment to LB 335.

CLERK: 713.

SENATOR CLARK: It is on page 713 of the Journal. Have you all voted?

CLERK: Senator Clark voting yes.

SENATOR CLARK: We need 25 votes for the adoption. Record the vote.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of the amendment.

SENATOR CLARK: The amendment is adopted. The next amendment. You have one from Senator Labeledz.

CLERK: The next amendment I have is from Senator Landis. Found on page 731 of the Legislative Journal.

SENATOR CLARK: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, this has been distributed to your desk before but unfortunately it has been a couple of days since that time and you may have misplaced it. The page in the Journal again is page 731 and it runs over to 732. Because it makes reference to the bill and to the previous Marsh amendment, it is significant that I go through with you what those provisions do. If you have read LB 335, you know that the committee collapsed the child abuse section and the adult protective services into the same set of language. They grafted the adult protective services idea onto the child abuse language that has been on the books for six to eight years. The problem with that is that the child abuse language is not uniformly applicable to the needs for adult protective services. For example, there is a provision that says that you shouldn't leave a child of under five in a car unattended, and because we simply just wrote in adults over sixty into that provision, if you were to pass 335 in its present position, it would be illegal to leave somebody over sixty years of age in a car unattended. That was one of the bill drafting problems of putting two ideas together at the same time, so what I have done is I have taken most of the child abuse language that does apply, dropped it out and applied it specifically to those who are over sixty and those who are disabled. And that is what these first several lines are all about. They talk about the kinds of situations that constitute abuse of the elderly, and in one part we, to compare with child abuse, we take mental health and define it a little more clearly. In the child abuse section it is not defined, in this section it is. It says, "or through a course of conduct involving duress or intimidation, causes him or her mental distress." That language parallels by the way the tort of intentional causing of emotional distress. So that is where that language comes from. Secondly, we took the phrase, "or other care", as it appears in the child abuse section and extended that definition to make that care necessary to maintain physical health. Again trying to further define those terms. Section 2 strikes that language about leaving somebody unattended in a car. Now, what are Section 3 and then page 2 of the amendments all about? On the floor the other day we adopted an amendment which applies to privileged communications standards to the adult protective services area, and in so doing we went back because of the way the bill was drafted and put them into the child abuse areas. The child

abuse area has been on the books for about six years with no problems. The attorneys have not come in and asked for it to be changed. The doctors have not come in and asked for it to be changed, neither has the clergy, neither has the press. We have no evidence that tells us that privileges are necessary in this area or that somebody has been put into a hard spot, that there has been criminal prosecutions or the like for these kinds of professionals. Everybody agreed that the child abuse law has been working, but because of the way the bill was drafted when we wanted to add these privileges to the adult abuse section, we stuck them back into this law that has been working for six years. So what that last provisions says is, those privileges apply but they apply to the adult protective services area only. In other words, look at the bottom where it says, in the Marsh amendment on page 37 of the Journal after information insert "concerning abuse or neglect described in Subsection 3(b)." If you look at this provision, you will see that (b) is the adult protective services area, not the child abuse section. I do not know of any groups that have contacted me, either attorneys, doctors, health care professionals, clergy, press, who have objected to this language. As far as I know, there is no active opposition to this change. And the purpose again is to redefine the adult protective services area, to break it out separately from child abuse and to tighten down the definitions and then to apply the privileges that we passed in the Marsh amendment to the adult protective services area and go back and clean up the child abuse language and return it to the way it was before this session began and before this amendment was adopted previously to 335. I would move the adoption of the Landis amendment.

SENATOR CLARK: Before we continue, I have the privilege of introducing 18 students from Villa Marie at Waverly. Sister Patricia is the teacher, from Senator Warner's District. Will you stand and be recognized, please? Welcome to the Legislature. Senator Labedz, you are next.

SENATOR LABEDZ: I just wanted to ask Senator Landis a question. I was out of the room and didn't hear the beginning.

SENATOR CLARK: Senator Landis, will you yield?

SENATOR LANDIS: I am sorry...yes, I will yield.

SENATOR CLARK: All right.

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SENATOR LABEDZ: Senator Landis, the way I understand it, Senator DeCamp's amendment that was just adopted left only the physicians. Right? In the bill?

SENATOR LANDIS: No, it worked the other way. He exempted the physicians.

SENATOR LABEDZ: Okay.

SENATOR LANDIS: In other words, the physicians will have to report. No one else will have to report.

SENATOR LABEDZ: Okay.

SENATOR LANDIS: For both child abuse and adult protective services.

SENATOR LABEDZ: Okay, and what are you doing now? You are putting back....

SENATOR LANDIS: Right, I am saying that attorneys will have to report on adult protective services, the press and the clergy in those situations what we passed the other day, those would apply in the adult protective services area. In other words, I am sorry, I have got this turned around. Let me give this to you right. With respect to child abuse, everyone has to report. With respect to the adult protective services area, the professionals are exempted, and it is consistent with the DeCamp language to the extent that attorneys would not have to report, the clergy would not have to report and the press would not have to report, but because of John's amendment, physicians would have to report in the adult area.

SENATOR LABEDZ: And in the adult area then you are adding the physicians?

SENATOR LANDIS: No.

SENATOR LABEDZ: I mean the clergy and the attorneys.

SENATOR LANDIS: The attorneys, the clergy and the press would not have to report in the adult protective services area.

SENATOR LABEDZ: But they would on child abuse?

SENATOR LANDIS: That is right.

SENATOR LABEDZ: Okay. Then I would still have to oppose

the amendment as I did in the beginning, and we just adopted Senator DeCamp's amendment which I think is sufficient, and, therefore, will have to object to your amendment. I urge the amendment to be defeated.

SENATOR CLARK: Senator DeCamp, your light is still on. Do you want to talk on this?

SENATOR DeCAMP: Mr. President, this is an area I don't claim to be an expert in or anything else, so what I want to say is so to speak heresay after a fashion. I have been assured by some pretty bright attorneys in the back of the room, and, of course, we are talking about lobbyists representing a variety of professions that this amendment does more than possibly Senator Landis envisions it does. The press people are screaming that it destroys the shield laws, etcetera, etcetera. I am wondering...I am wondering if Senator Landis would want to take five or ten minutes, go to some other bill, and go at least talk to them so that we don't spend an hour here trying to each explain what we think this amendment does. I tried to make mine abundantly simple and I guess it was, and it was simple for a purpose so that you would all know that the clergy were exempted as everybody thought they had been for a couple thousand years, at least in the Catholic religion, and the lawyers maintained the thing they have had for years which is the attorney-client privilege. Now I find out the doctors are a little owly at me. I just learned this, because I have made them report adult abuse, and I guess my reason for that is very simple. I think they are in a position probably to know better than anybody else what is going on there, and their particular purpose is to protect that individual from physical harm and so on and so forth, so it seems to make sense to me, but I don't fully understand all the things Dave is doing and so I am wondering if you would think about maybe going back and talk to the half a dozen different people going in different directions back there that seem to think that the end of the world is coming if your amendment is adopted.

SENATOR CLARK: Senator Landis.

SENATOR LANDIS: Yes, I will be happy to pass over for five minutes.



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LB 335, 378, 395, 399, 461,  
464, 480, 586, 621, 759, 793, 810,  
907, 918

Mr. President, your Committee on Retirement Systems whose Chairman is Senator Fowler reports LB 395 indefinitely postponed, 399 indefinitely postponed, 461 indefinitely postponed, 464 indefinitely postponed, 810 indefinitely postponed.

Senator Vickers offers proposed rules change. That will be referred to the Rules Committee. Senator Clark would like to print amendment to LB 759. Your Committee on Revenue reports 480 advanced to General File with amendments, and 793 General File with amendments, both signed by Senator Carsten as Chair. Your Committee on Banking reports 621 advanced to General File, 586 indefinitely postponed, 907 indefinitely postponed, 918 indefinitely postponed. All signed by Senator DeCamp. Senator Wesely would like to print amendments to LB 378 in the Journal, Mr. President, and Senator Richard Peterson amendments to 378 in the Journal. (See pages 839 through 844 of the Journal.)

Mr. President, with respect to 335, we have pending an amendment offered by Senator Landis. I understand he has an amendment to that amendment.

SENATOR CLARK: Read the amendment.

CLERK: (Read the Landis amendment as found on page 844 of the Legislative Journal.)

SENATOR CLARK: Senator Landis.

SENATOR LANDIS: Thank you. This amendment to my amendment does what it was I told you I wanted to accomplish. I appreciate the assistance of those in the lobby and those on the floor who helped to redraft it to capture this idea. It is exactly the idea I told you before, but I had unfortunately not caught the one section of the language that I was offering and its implications. That was brought to my attention, after having had my head stoved in by a two by four to get my attention, I was a little recalcitrant and voices got a little high and tempers ran a little hot. But this amendment puts the 335 language in this form. The child abuse, the law stays the way it was prior to 335. Obligations to report remain the same, and that means everybody reports. This amendment then goes back to the principle that I enunciated before, for adult abuse the privileges that we previously passed would apply to the adult abuse sections. Those privileges are the attorney, client, the clergy, the physician patient,

and the media. The concept is simple. Child abuse goes back to the law we had. Privileges apply in the adult abuse section. It applies across all of the interest groups. These groups do not have active opposition, the doctors, the lawyers and the media. I can tell you that there is still some qualms from the clergy about the child abuse section, but of course they have always had it. But the other three groups have acquiesced to this language and to the Landis amendment proper. I would move for this adoption. In the event you have qualms with 335, its philosophy, its implications, let's take it up following the adoption of these two amendments. Thank you.

SENATOR CLARK: Senator Labedz, on the amendment to the amendment.

SENATOR LABEDZ: Thank you. I have another question now for Senator Landis.

SENATOR CLARK: Do you yield?

SENATOR LANDIS: I yield.

SENATOR LABEDZ: Thank you. Senator Landis, when a parent, husband or wife, is abusing the child and that person goes to the spouse abuse or child abuse center, they have no obligation to report that. Right? To the police?

SENATOR LANDIS: I don't believe that is true. I believe that everyone has an obligation to report. If I am mistaken, you may correct me. As I understand the child abuse law, and John has read this law and thought about it, it applies to everyone, everyone has to report.

SENATOR LABEDZ: Thank you. I would like to go over a situation with you especially when it pertains to the clergy. If one of the parents is abusing a child, they have the opportunity and should by all means report that to the police, but instead they decide that they would need counseling and go to their pastor or their minister to talk the situation over and see if there is any help available. Now I want to stress that that parent would definitely call the police if she wanted the husband or the wife put in jail for child abuse. Instead, she goes to the pastor or the minister and asks for help. If she knows, or he knows that that minister or that pastor is going to turn her in to the police or turn the one that is abusing the child in to the police, then definitely she will not go to the minister, she will not go to the pastor.

That is the only place that she has to turn to. If she was going to do it, she would do it in the first place herself. I don't believe that that is what we want. Evidently, those people that are abusing or know that their child is being abused by the parent is definitely going to seek help and if that help is going to turn her husband or that wife in to the police, I doubt if they are going to do it. Protecting the privileged communication is in the adult abuse area and the child abuse area and not protecting that communication in the child abuse area, the presumption that it does not and is meant to be protected in the child abuse area, I just can't understand that. I believe that we should definitely exclude the clergy. I am not concerned with the attorneys and the physicians, but I am concerned about the neighborhood minister or the neighborhood pastor. The priest or the minister will not go to the police. That confidentiality is very sacred to the member of the clergy and that any law...more than any law than this Unicameral can enact. Therefore, the net effect of this amendment would be to make the member of the clergy subject to prosecution, and by that I mean if he does not report it to the police, two or three months later this man is turned in to the police say by the neighbor, that neighbor then will go to the police, tell them the whole story that the child is being abused and therefore that clergy because two or three months ago he did not report it, is subject to the county attorney filing charges against the clergy. I definitely think that this amendment should be defeated and leave the bill as it stands now amended by Senator DeCamp a short time ago. Thank you very much.

SENATOR CLARK: Senator DeCamp. We have got about three minutes left before noon.

SENATOR DeCAMP: Three. I don't think we will get her finished in three.

SENATOR CLARK: I don't either.

SENATOR DeCAMP: Why don't we go home then?

SENATOR CLARK: Fine with me.

SENATOR DeCAMP: We'll take it up again.

SENATOR CLARK: I don't think there is any way we can take a vote on this. We have got....

SENATOR DeCAMP: Well, then if we are going to go ahead

and vote on this amendment, I am going to talk....

SENATOR CLARK: We have got three other lights on.

SENATOR DeCAMP: Okay, then I will talk on it. Mr. President and members of the Legislature, I want you to listen and I mean it. I am as concerned about child abuse and adult abuse as anybody else but not once on the floor have we talked about the real fundamental issue in this bill, and why I was tempted to kill the bill and why I think you better start looking at it. I am willing to keep the bill alive. I am willing to try to do something about adult abuse and child abuse and we need to. But in moving into this area we have played with some very fundamental constitutional concepts and they go something like this. We say, number one, we have a problem, people abuse their children. Number two, we don't know how to get them identified. So, number three, we create a new crime and the crime no longer is child abuse. That is separate over here. Crime no longer is adult abuse. That is over there. The crime now is one and a half million Nebraskans who suspect that somebody else by their standards in their head are doing something wrong in raising their children from a neglect standpoint, or whatever, and admittedly it will help cure child abuse, but it sure do play with the Constitution awful close and fast. And I realize we have to maybe do these things to get some of these problems solved, but what prevents you once you set up the precedent, the principle, the concept of ordering everybody to subjectively evaluate everybody else, what prevents you from them saying, well, we have got a problem on drug abuse, or we have got a problem on alcoholism. We have got a problem on adultery. We have got a problem on anything. We order people now under pain of crime to report on their neighbor. The last place they had that system in effect pretty heavily and still exists is a place called Russia. Children came in to school and they had to say what their parents said at home that might be dangerous to the state. It is the exact identical principle. That is what we are doing. Look at your bill and read it. And as I say, I realize the problems full well but you are playing with heavy stuff, the Constitution, a whole change of principle. Now if we have to do this, then let's do it pretty carefully. Senator Landis treats with almost casualness the fact that well we are making a little alteration in the clergy. Yes, a little alteration, two hundred cotton pickin' years history in this country of the sanctity of the confessional for Catholics and the confidentiality of the minister, I

would say you are making a tad of change there. So I think the bill in the form I amended it moves very close to that line I don't want to cross. In fact, if I had my druthers I really think it is a dangerous concept, but it has worked since 1973 to make some improvements in child abuse, maybe it can make some improvements in adult abuse. But you push her too far and you are going to end up with nothing, and I literally mean that. I am willing to let you tinker around with that Constitution, but by golly somebody, you want to know my religion, it's that first amendment, and you bend her or tatter her too much, and I will bite back. And I think you are getting close to the line on this. Now who is in the best position to know some things about abuse? I have to say the doctor is, and I know some of the people out there say, well, the doctors want to be excused too. Well, if you are making this principle apply to everybody out there, you're making it apply to Bernice and Marge and me, then the doctor who is probably in the best position to know probably should be covered. That is why I left him having to report. He is dealing with safety. But once again, Dave, your amendment moves into the clergy thing and you say, well, we are ordering the priest under pain of criminal law when he learns of something in the confessional that he has to trot down to the police station. Now, Shirley very correctly is going to say, well, that priest ain't going to do it. And I say, fine. But you have ordered him under the law. Laws are strange things. You put them on the books on....

SENATOR CLARK: You have 30 seconds.

SENATOR DeCAMP: ....1982 and they crop up fifty years later and I witnessed it. I used to work in the police department here. I worked as a police reporter and I watched them use cohabitation laws written 60 years ago to march around this city among young people and run them out of town and make them confess on drug things and everything else. Laws lay there to be used and abused. Make sure they are right in the first place. I don't want to see you get too far out on this thing. That is why I am opposing this amendment.

SENATOR CLARK: Your time is up. Senator Landis, can you close quickly so we can get this moving?

SENATOR LANDIS: I can, thank you. There are questions about the philosophy of 335. Senator DeCamp brought them up. They are reasonable and I suggest that when we talk about the bill in its appropriate form that we argue those

philosophical points. I am ready to meet him on that ground another day. This amendment is a matter of clean up. This amendment is a matter of putting everybody back on the sides that they started when this whole controversy began. Now the people in the lobby agreed. The proponents for the child abuse area are agreed. The people in the adult protective services area are agreed. Senator Marsh and I are agreed, and with this amendment we will be able to debate the philosophy John brings up. It puts everybody back where they were with a law that has been on the books for about 8 years now and in this new situation of adult protective services it doesn't apply to attorneys, the media, the clergy or physicians. This is a matter of cleaning it up so that we can get into a position to argue the philosophy which we should do another day. I tell you that this puts the question in a proper frame for us to debate the philosophy and everybody has agreed to fight it out on this basis. I think we should do that and adopt the amendment at this time and then fight the questions that John brings up on another occasion.

SENATOR CLARK: The question is the adoption of the amendment to the amendment. All those in favor vote aye, opposed vote nay. It takes 25 votes on this.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? I was afraid, Senator Landis, you would run into this because most of them have left...a lot of them. Voting on the amendment to the amendment by Senator Landis. Once more, have you all voted?

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Record the vote.

CLERK: 25 ayes, Mr. President, and 11 nays on adoption of the Landis amendment.

SENATOR CLARK: The amendment is adopted. Now the amendment as amended. All those in favor of that vote aye, opposed vote nay. Senator Johnson.

SENATOR V. JOHNSON: I want to have Senator Landis go through it one more time as to what his amendment is.

SENATOR CLARK: Well, we are not going to do that. We will knock it off now if you are going to do that because we are already late and the buses are waiting for the people

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to take them to Stockgrowers. All right, we will knock it off now so you will understand it later. I think you are right. I think you ought to be able to understand what you are voting on. Senator Higgins. We have got a few things to read in before we break up.

CLERK: Mr. President, Business and Labor gives notice of hearing. Signed by Senator Barrett.

I have an announcement from the Speaker regarding scheduling of priority bills on General File for General File debate, and a new A bill, 36A by Senator Schmit. (Read title.) (See page 845 of the Journal.)

SENATOR CLARK: Senator Johnson, would you like to adjourn us until tomorrow morning, please?

SENATOR V. JOHNSON: I have no alternative, Mr. Speaker. Mr. Speaker, I would move that we adjourn until 9:00 a.m. Thursday, February 25.

SENATOR CLARK: Better make that 8:30 because we have got Final Reading.

SENATOR V. JOHNSON: Oh, I'm sorry, until 8:30 a.m.

SENATOR CLARK: All right, you have heard the motion. All those in favor say aye. Opposed. We are adjourned until 8:30 tomorrow morning.

Edited by

L. M. Benischek  
L. M. Benischek

March 1, 1982

LB 152, 222, 304, 335, 348,  
353, 358, 431, 440, 508,  
525, 527, 578, 594, 624,  
771, 772, 795, 799, 844,  
871, 872, 877, 898, 921, 955

PRESIDENT LUEDTKE PRESIDING

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

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

PRESIDENT: A quorum being present, Mr. Clerk, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, a series of things. Your committee on Banking, Commerce and Insurance whose chairman is Senator DeCamp instructs me to report LB 358 advanced to General File with committee amendments attached. (See pages 881-884 of the Legislative Journal.)

Your committee on Education reports LB 578 advanced to General File with committee amendments attached. That is signed by Senator Koch. (See page 885 of the Legislative Journal.)

Your committee on Government reports 921 advanced to General File; 594 indefinitely postponed; 624 indefinitely postponed; 795 indefinitely postponed; 844 indefinitely postponed; 871 indefinitely postponed; 872 indefinitely postponed. That is all signed by Senator Kahle as Chair, Mr. President.

Your committee on Banking whose chairman is Senator DeCamp reports 799 advanced to General File with committee amendments attached. 877 is advanced to General File from the Public Works Committee. 152 indefinitely postponed; 222 indefinitely postponed; 348 indefinitely postponed; 508 indefinitely postponed; 527 indefinitely postponed; 771 indefinitely postponed; 772 indefinitely postponed; 955 indefinitely postponed, all signed by Senator Kremer as Chair. (See pages 885-886 of the Legislative Journal.)

Mr. President, your Enrolling Clerk reports that she presented to the Governor LB 353, 304 and 431. The Governor has received engrossed LB 440 and signed that bill on February 25, Mr. President. (See page 886 of the Legislative Journal.)

Rules gives notice of a hearing for Tuesday, March 16.

I have a series of Attorney General's opinions, the first addressed to Senator DeCamp regarding LB 898; one to Senator Culllan regarding LB 525; one to Senator Wagner regarding interpretation of Statutory Section 2-1504; one to Senator DeCamp regarding 335. (See pages 887-895 of the Legislative Journal.)



CLERK: Mr. President, when we were last on LB 335 the E & R amendments were adopted on January 29. There was an amendment from Senator Marsh that was adopted on February 10. There was an amendment from Senator DeCamp that was adopted on February 24. I now have pending an amendment from Senator Landis. It is found on page 731 of the Legislative Journal.

SPEAKER MARVEL: Senator Landis, do you want to reoffer your amendment?

SENATOR LANDIS: I do. Mr. Speaker, members of the Legislature, I'm having passed out for you a copy of the amended amendment to 335 so that you can take a look at what we did last time and you can take a look at the language that I am offering here. As these hit your desk it is a two sided piece. It will be there very shortly. They are being passed out now, Marg. The idea of this amendment is clear and I talked about it the last time I was up. Child abuse and adult abuse are separated. The definitions of adult abuse are narrowed somewhat, taking out the language that really doesn't make sense to apply to them such as, "leaving them unattended in a car," and also some other tightening of definitions. Those appear here in this section, lines 7 through 17, with respect to the privileges to the confidential nature of exchanges between professionals and individuals. If you pass this amendment it puts the bill into this form. Child abuse goes back to the law the way that we've had it, that is that there are no privileges applicable. With respect to adult abuse there are applicable privileges. Those are for the attorney, for the media, for the physician and for the clergyman. That is what is contained in this amendment to 335 and I would move its adoption.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I oppose the amendment and I would like to tell you the form the bill is in right now and I believe that form makes eminent sense if you're going to have this proposal. As the bill exists now with the amendment you adopted the other day, as it exists now, a physician must report child abuse or adult abuse and as it exists now with the amendment you adopted the other day, the clergy are exempt, such as a priest in confession for child abuse, any priest in confession is exempt, "for adult abuse." As the bill exists now a lawyer's privilege is retained between lawyer and client for child abuse and it is retained for adult abuse. Now, that to me, if you are going to deal with this concept makes eminent sense. Why? Three reasons for sure. Number one, who is better in a position to know if true abuse of either adult or a child is going on than "a physician?" Who is in a better

position? Who is the one that goes into the nursing homes? Who is the one that deals with a physically abused adult? Who is the one that receives the information? A physician. But under the Landis amendment you would eliminate the physician and under the Landis amendment you would now say the clergy must report in child abuse. Now I guarantee you he can say it but it isn't going to happen. You are not going to by law, change what priests do in a confessional. And he can say it but you are not going to break or destroy the attorney-client privilege. So as a lawyer I am overwhelmed by another lawyer saying you are going to be able to compel a priest to testify or that you are going to be able to compel an attorney to destroy the attorney-client relationship because it won't happen and if it is countered or offered to me, "well, that is the way we did it in '73," I would simply submit to you, "indeed, now it is time to correct it and we have." And if you take the physician out of adult abuse then the one area where you might be able to accomplish some good, you are eliminating. You think the priests are going to be the ones to report adult abuse for you? You think the lawyers are going to be the ones? The general public? Maybe some but the essence of it is going to have to come probably from the physician. So I would urge you to maintain the bill precisely as it is now and if you think the concept is good, then you've got it in as good a form as you are going to get it. Remember this. We do compel physicians to report such things as gunshot wounds, venereal disease. We have a system, we have a standard and it has worked. To now suddenly exempt them from reporting and order priests to start reporting things is just a little bit of folly in my humble opinion. I would ask Senator Landis three very super quick questions in finishing here. Senator Landis, do you sincerely believe your law is going to compel any priest to break the secret of the confessional which is what you are ordering to do in child abuse?

SENATOR LANDIS: Ultimately it is a matter of conscience and the clergy will decide for themselves.

SENATOR DeCAMP: You are ordering them by this amendment to do that. Is that correct?

SENATOR LANDIS: No, existing law orders them to do that.

SENATOR DeCAMP: No, you amended that.

SENATOR LANDIS: Exactly and existing law...if 335 doesn't change orders them to do that, that's right.

SENATOR DeCAMP: As the bill is you are ordering him to do that...

SPEAKER MARVEL: You have about thirty seconds.

SENATOR DeCAMP: You are making that change back. Is that correct?

SENATOR LANDIS: We retain existing law, yes, that's right.

SENATOR DeCAMP: Do you believe you can compel a lawyer to break the attorney-client privilege?

SENATOR LANDIS: As a matter of fact I think you can in the event, as you state, you can violate a physician-patient relationship by legal order, my guess is that you can with the attorneys as well. I see no constitutional distinction between an attorney and a physician with respect to being a professional that would allow the Legislature to draw rules for one but not the other.

SENATOR DeCAMP: Well, Mr. President, let me simply finish by saying...

SPEAKER MARVEL: You have about one minute left.

SENATOR DeCAMP: ...it makes no sense to suddenly exempt the one area where you might get some information on adult abuse if it does exist and it does and that is the doctor. He is the one with access to all the places and it makes no sense to pass laws here that say you are going to change the system of the Catholic confessional or the clergy that has existed for a couple thousand years and certainly two hundred years in this country and there is an Attorney General's opinion which I haven't circulated but I think it will be printed in the Journal tomorrow, there is no way you are going to crack the attorney-client privilege. So what you are giving up, the physician on the one hand and what you are putting in on the other is just patently absurd and you are destroying your own bill, Senator Marsh, and I would urge you to retain the bill in its present form. I think you've got a much better situation.

SPEAKER MARVEL: Senator Haberman, then Senator Cullan, and then Senator Marsh.

SENATOR HABERMAN: Mr. President, members of the Legislature, we've heard the talk about the priests and the confessional. This has been bothering me because I felt somewhere along the line a priest, if he is responsible for the adult, surely he is responsible for a child. So for many years we did the photography work for Piux X and over the number of years I made some friends, some real good close friends and being an Episcopalian I'm halfway a Roman Catholic anyway, so I

called Father Dawson this morning. Now Father Dawson is the Superintendent of Schools for the Lincoln Diocese and all of southeast Nebraska and I said, "Father Dawson, I have a problem and I have to ask a question and I don't know of who I can ask it of except of you because you are my friend." I said, "Father Dawson, they are trying to destroy the child abuse bill and the elderly abuse bill by saying what is said in a confessional must remain in a confessional. How do you handle this?" And Father Dawson says, "Rex, if a child comes into the confessional and says, 'Father, I'm being abused,' the priest says, 'See me in my office afterwards!'" The child goes to the office that Father Dawson says, "We remove it to the external form. And the child then tells me what the problem is." He said, "Rex, if an elderly came into my confessional and told me they were being abused, he would tell this person, 'come to my office after the confession', they would remove it to the external form, the priest would listen to them and become involved." So, therefore, I say, here is the answer. Here is the answer that I was seeking for. How could a priest be involved in not helping out a child that is being abused or somebody in the elderly? And that is the answer Father Dawson gave me. If anybody should know, he should. That they remove it to the external form and then they can become involved. Now I know that I'm getting into something here that probably John DeCamp, Senator DeCamp or Senator Labedz is more knowledgeable than I am but I had to stand up here and say that if you remove this and if you exclude attorneys and if you exclude physicians, now they are all covered by the law now, they are immune, you are going to destroy the elderly abuse bill and you are going to destroy the child abuse bill and I don't think it is right to do this. They are protected by the law. If somebody has an answer for what Father Dawson told me, I'll listen and I will check with him and see what he has to say. But I knew there was something that had to be said. Now do I have to go through what we did last year? Do you want me to pass around the pictures of little Bobby to show what happens to a child abused child to get your attention to what we are doing to these bills, what we are doing with this bill?

SENATOR CLARK PRESIDING

SENATOR CLARK: You have one minute left.

SENATOR HABERMAN: I'll pass it around if you want to look at it again. This is what child abuse could do and this is what we are destroying. We are destroying these bills and I don't think we should do this. I think we should accept 335 in its original form, give the protection to the elderly, keep the protection for the child. Thank you, Mr. President.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I understand that we are on the Landis amendment. Is that correct, Senator Landis? I would rise to oppose the Landis amendment and I do so because I believe that it is just imperative that there be an obligation in the statutes in the State of Nebraska that physicians be required to report abuse whether it be for elderly or whether it be for a child. And I don't think it is rational to distinguish between elderly abuse and child abuse in these particular circumstances and I oppose Senator Landis' attempt to do that. I think that you'll find that most of the cases which are actually reported are probably reported by physicians because they are the individuals that I think in the first instance in many cases, particularly in cases of severe child abuse or severe abuse of any type, are the individuals who are going to come in contact with that abuse or have the opportunity to discover it through examinations or through emergency room care which is required. I'm taking a course at Creighton University in Law School this year, a medical law course, and one of the cases which I recently read in this area, is a case about malpractice and it related to a case in the state, I believe it was California, where they have a requirement and there is a duty upon physicians to report any child abuse and if they do not report that child abuse, they are subject to a misdemeanor. In this particular case a physician saw a child who was badly abused, did not report it, sent the child back to the home situation and shortly thereafter, the mother killed this child which was less than two years old. And the basis of liability and the duty that the doctor owed his patient, the child, was taken from the statute which established a duty to report and I think that was important and I think that that case was one with which many physicians became aware of and I think that encouraged them to report similar circumstances. So I think the duty is important, not only as far as the criminal sanctions which are involved that being a misdemeanor, I think it is important because it sets a standard. It says that it is the policy of the State of Nebraska that physicians do report and I think that it is a reasonable obligation to impose upon physicians and I think it is terribly important if physicians don't have to report then any reporting law is really a very meaningless reporting law. So I have to oppose any change that would not require physicians to report, not only child abuse but abuse of those persons who are elderly and who may not no longer have the ability to communicate their problems to those who can assist them. So I think it is very unwise of us to in any way relieve the duty, the legal duty, of physicians to report in this area and I strongly oppose the Landis amendment.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Mr. Chairman and members of the Legislature, I think this body needs to know what we really are discussing on this floor. We are discussing the child abuse legislation and trying to separate it from the adult abuse. I have in my hand a communication from the national center on child abuse and neglect, United States Childrens Bureau which is under Health and Human Services of our federal government. "You should know that if the reporting provisions in the child abuse state law are eliminated, the state will be ineligible for the state grant from Health and Human Services. Our state has benefitted for a number of years from these funds which are available again this year. This is a top priority with the administration. This is an important part of the protection within our state. I urge you to adopt the amendment which Senator Landis has offered and I would like to read just one section from the National Committee for Prevention of Child abuse. Kathy Campbell who is executive secretary, "We support the pending Landis amendment to separate the reporting of child abuse and the reporting of elderly abuse. We do not support exemptions for the reporting of child abuse. We would support a motion to indefinitely postpone 335 if the bill cannot be clarified. The adults in our state ask for this legislation, LB 335, but they do not want the legislation at the expense of children. Children under our current law have protection. All persons are responsible for reporting child abuse in our state. I urge you to support Senator Landis' amendment which would separate the adults and the child abuse sections for the benefit of adults but especially for the benefit of the children who currently do have this protection in the law and we not only would be harming children but we also would be losing the support dollars for the child abuse program if we do not adopt Senator Landis' amendment."

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President, members of the Legislature, the member of the clergy will never report confidential communications made to him or her to the police. No law which the Unicameral may pass will cause the member of the clergy to break one of his or her most sacred vows. Thus when the abuse is discovered by other means after there has been a confidential communication, law enforcement officials could then subject the member of the clergy to criminal prosecution. Now this is the message that I got from the clergy in speaking to them last week and I did not only speak to my pastor but several others in the area of Omaha. I vehemently oppose



keeping the clergy in this amendment. As I mentioned the other day, when there is abuse of a child, either by the husband or the mother, the first person they think of is the clergy, whether they go to the confessional or whether they go visit the clergy. There is no way that they will go there knowing, for any counselling whatsoever, knowing that that clergy by law has to report that to the police. If a child is being abused, one of the parents definitely would go to the police themselves if they wanted the husband or the mother put into jail. No way will they go to their clergy knowing that they will be turned in by that clergy if they do report child abuse. There is many child abuse affairs that were quieted down and completely changed even if there was separation between the two by the clergy because of counselling they received or advice they received by the clergy. If they did not report that to the police according to this amendment and something happened a month or two later, that particular clergyman or woman, would be subject to prosecution. Therefore, I do not approve of the amendment as long as the clergy are involved. Thank you very much.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, you and I have been faced with LB 335 now for several hours of legislative debate conducted off and on over the past week or so and as each minute ticks by the quality of the debate becomes more and more confused. It becomes more and more confused because we have taken existing child abuse statutes and we have tried to marry them to the new concept to protect older people and handicapped people against abuse. It is confused because we still continue to have dialogue as to who should be exempted from reporting requirements and who should be required to report. I personally, as I listen to the debate and I have listened fairly attentively all along, have basically concluded that Senator Landis' amendment is 'incorrect because it would protect physicians from reporting in the adult abuse area, that Senator Landis' amendment is essentially correct because it would at least restore the child abuse situation to where it presently is, that Senator DeCamp's amendment has some merit because he makes certain that physicians have to report adult abuse but his amendment is without merit because it would exempt out attorneys and clergymen from all kinds of abuse reporting. Incidentally, what does it mean to be exempted out? To be exempted out isn't necessarily a very good thing because as a lawyer, for example, I can have a case where I find out there is an extraordinary amount of child abuse occurring and conclude that my basic duty to that child is to make a report to the child abuse authorities because I want to make certain that child is protected. Now if, in fact,

I am exempted out from mandatory reporting requirements and I then go ahead and make the report, I don't have any civil liability protection, I mean none. I can turn around and be sued by a parent later on because (a) I breached a confidential rule, (b) because I disclosed incorrect information, (c) because I am basically a bad guy. And you know what that does, that has an enormous inhibiting effect upon somebody of halfway respectable good will who wants to come forward and do what is right by a child. So I basically think the time has come. It has come for us to reject Senator Landis' amendment and it has come for one of us and it will be me, if that amendment is rejected, to file a motion to indefinitely postpone LB 335. This issue needs to be heard in some other year.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, hate to beat a dead horse but I think this is kind of important we do understand it. When we talk about the clergy privilege we're not talking about the clergy and everything they learn. They are under the general law. We're talking about a very, very narrow area, a very narrow area, just the privileged communication area and, Senator Landis and Senator Johnson, irrespective of what you do you aren't going to crack that. So I really wonder why fairly eminently bright attorneys believe they are going to. I would like to read you the Supreme Court in Nebraska case on just how narrow this is. "To render a communication to a minister of the gospel or priest, privileged, it must have been received in confidence." We're talking pretty much confessional type stuff. "By this we do not mean that it must be made under the express promise of secrecy but rather that the communication was in confidence and with the understanding, expressed or implied, that it should not be revealed to anyone. The mere fact that a communication is made to a person who is a lawyer, a doctor or a priest does not of itself make such communication privileged." So what's that all mean? It means when you say you are eliminating the privilege you are eliminating the very narrow privilege. The priest and clergy generally would fall under the general law unless they receive something very strictly in confidence and so this is what I am saying you shouldn't do and cannot do and that is why I'm also submitting to you, Senator Marsh, that your withholding of funds is false. They did not deal with that specific question. Now about the lawyers, the lawyers' aspect. This is from the latest Attorney General's opinion, I happen to have done some research and I agree. "It is our opinion that any statutory attempts to cut down upon the common law privilege of the attorney-client relationship, at least as



to communications concerning the interest of the client, would be held unconstitutional by the Nebraska Supreme Court as an invasion of the Doctrine of Separation of Powers." And then it goes and documents a variety of cases to substantiate this. "We are of the opinion that any curtailment of the common law attorney-client privilege as outlined above would be difficult to defend as to constitutionality. What I am suggesting to you, Senator Marsh and Senator Landis, if you want a bill that does anything, deal with the one area where you can get information which is the doctor on adult abuse and you might accomplish something. But the Landis amendment eliminates that one area and it puts in two areas that you are not going to be able to enforce in law anyway, clergy and the attorney-client. I don't know how more strongly I can say that is the most illogical approach I have ever seen. However, if that is the way you want to go, have at it. It is pure folly and stupidity and I mean it in those strongest terms. To take the one area where you can get information and eliminate it, in other words, doctors, and the two areas where you are not going to be able to get anything and suddenly say, they are compelled now. It just doesn't make sense. And so with my amendment and the way the bill is now, as it is already adopted by you, you have doctors where you can get the information compelled, despite their privilege, to provide the information just the same as they would in a gunshot or venereal disease or whatever, the same way we have done there and those areas where you cannot have any effect anyway, the priest and the lawyer with the attorney-client privilege, the very narrow privilege, I'm saying we're eliminating it...

SENATOR CLARK: You have one minute.

SENATOR DeCAMP: ...but we're eliminating it from child abuse and straightening out those statutes also. That, as I say, seems to me to have overwhelming logic to it but I guess that is not registering much.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have to agree with Senator Johnson that the issue has become confused and many elements have been mixed in one bill that ought not to be. If the child abuse legislation currently on the books now has worked and has done some good for the children and it is felt that there are problems with the elderly and the handicapped above the age of eighteen, that ought to be a separate issue and I don't think an attempt ought to be made to amend it into the child abuse legislation. What we have when we talk about what ministers

are required to do by law as every other person would be required to do is a situation where a state requirement collides with conscience and that particular issue takes many forms. If an individual, because of a belief in what he or she considers a higher law, whether it is a law handed down by a higher power or whatever you call it, a law of one's church or religion or whatever kind of society issues such directives that bind the conscience or an individual's personal outlook on life which might be defined as individual conscience, that person makes a determination that what the state requires cannot be obeyed because it will be a violation of the requirement of conscience. But once the state enacts a requirement the person who chooses to violate or disregard that requirement has a price to pay. What the Legislature does is determines which people abiding by their conscience will have a price to pay and which people abiding by their conscience will not have a price to pay. If you belong to a whoop-de-do type religion which is called Fundamentalist, the kind by the way that I was reared in, but as Paul said, "When I was a child, I thought as a child and I understood as a child but when I became a man I put away childish things." I left it but if you belong to one of those types of groups you are not too popular so you must pay the price of adhering to your conscience and your convictions by going to jail, by being deprived of your freedom, but if you belong to one of the more orthodox or respectable religions and the degree of respectability for religion depends on who belongs to it and supports it, if you belong to one of the more respectable religions, you can disregard certain requirements that other people are required to adhere to with impunity. So we have a preacher sitting in jail right now in Nebraska because his conscience tells him certain things about one particular problem and I don't think the issue of what that particular problem is makes any difference at all now. We are talking about when the conscience prohibits a person from complying with what the state requires. I think when a person is prepared to go to jail for a belief it is difficult to say that person is jiving and not really believing as he declares. So either the state should respect everybody's conscience, everybody's religious conviction and exempt everybody from every state requirement that violates conscience or hold everybody's feet to the fire. Now I can speak like this because I have no religion that I am trying to uphold or any religion that I am trying to put down. Were it left to me we wouldn't have any religious disputes because we might not have any religion. But the fact is that we do have them and they lead people down different paths. I do give this to the people who claim genuinely to believe in a higher power. There is no way that I or anybody else...

SENATOR CLARK: You have one minute left, Senator.

SENATOR CHAMBERS: ...can say what the duty of a person to that higher power would be other than that person. Religion is in essence the relationship between that person and his or her higher power. Where is the state going to intrude? If it intrudes on one it should intrude on all. If it exempts one it should exempt all depending on how things go on this particular measure. My view of what my duty as a legislator is may change when we come to those school bills and there is a man sitting in jail. I'm not doing what I would do out of sympathy for him. It would be on the broad base principle of how much the state should intrude on a person's conscience and what punishment ought to be imposed on that person for violating a requirement of the state in obedience to conscience but I think LB 335 under the circumstances ought to be indefinitely postponed.

SENATOR CLARK: Under the South balcony is Charles Marr from Scottsbluff, exdirector of the West Nebraska General Hospital, a guest of Senator William Nichol. Will you stand and be recognized, please. Welcome to the Legislature. Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman, I would move we call the question.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. Chairman, I think Senator DeCamp spoke about three times on this and I would like to have another opportunity to speak.

SENATOR CLARK: I think he has spoken twice. Senator Haberman, go ahead.

SENATOR HABERMAN: I'd like to ask a question of Senator DeCamp. Senator DeCamp, does the amendments on 335 jeopardize, influence or change the child abuse law?

SENATOR DeCAMP: It changes the child abuse law to this degree.

SENATOR HABERMAN: It takes out the...

SENATOR DeCAMP: It says, "clergy with the privileged communication only are exempt,"...

SENATOR HABERMAN: Can it....?

SENATOR DeCAMP: ...and it...well you asked me and I'm

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telling you.

SENATOR HABERMAN. Okay, thank you.

SENATOR DeCAMP: And it says lawyers with the privileged communication only are exempt.

SENATOR HABERMAN: Thank you, thank you. Now, Senator DeCamp, why weren't you up on your feet saying anything to doing this when we passed the bill back in 1979?

SENATOR DeCAMP: It wasn't in seventy.....

SENATOR HABERMAN: Now, just a minute, just a minute, we heard none of this then but now all of a sudden...

SENATOR DeCAMP: Do you want an answer or not?

SENATOR HABERMAN: No, I'm just satisfied just to say where were you in...

SENATOR DeCAMP: It wasn't in '79, it was in '73.

SENATOR CLARK: Just one at a time, please. One at a time. You have the floor.

SENATOR HABERMAN: I wonder where Senator DeCamp was back in 1979 when we were discussing the child abuse law which, not checking the records, I'd say he probably supported it and you had a letter passed around to you that shows that it hasn't been violated, any of the reporting systems have been violated. So I can't see all of a sudden why the switch. Why should we destroy both of these bills? And I'm going to agree with Senator Chambers that if we can't get this bill straightened out, that we ought to kill 335 and leave the child abuse law alone. Thank you, Mr. President.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Mr. Chairman and members of the Legislature, I think I understood Senator DeCamp to say that the Supreme Court would not allow us to interject ourselves into the lawyer-client relationship but I fail to see how that is any different than the physician-client relationship if it is specifically set out in law.

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

SENATOR LANDIS: Are we worn out on this, hmm? Have we reached the end of our attention and our concentration?

If we have, I'll sit down but if I can have five more minutes of your attention on this I'd like to close on my amendment to LB 335. Some tough issues here and I think Vard Johnson put the question very, very succinctly with respect to the physicians and LB 335 and whether or not they should be covered for adult abuse. The difficulty with Vard's analysis is that his answer to this, Senator Chamber's answer to this and others' answers is that the adults may not be protected, that there should be no reporting, that there should not be a criminal charge for those who abuse the elderly for cruel confinement or cruel punishment or intimidation or coercion or sexual assault, the things that are enumerated in LB 335. But since we are incapable of sticking our nose to the grindstone long enough to come up with an acceptable policy because we can't gut out a tough and complex issue we have to throw in the towel and simply leave adult individuals who may not be in a position to fend for themselves well, at the mercy of those who may wish to abuse them. I don't accept that and that is why I offer this amendment. Yes, it is a tricky, complex piece of billdrafting but I think it is as best as I can do in the situation. Yes, I would like to have doctors reporting adult abuse and not have privileged communication. My analysis is, politically we can't get those fragments of 335 that are valuable if we make that exchange. That is why it is in there. I would love to draw the perfect bill that Vard outlines. I don't think it can pass politically. So what is in there and why is it there? I choose, rather than to pick and choose from a smorgasboard of professions who should be exempt, I choose to alter our position based on the individuals protected and this is my policy. Children are beyond legal capacity. They are not, by law, capable of taking care of themselves. We do not allow them to serve as witnesses in cases. We do not allow them to bring lawsuits in their own name. We do not say that they are capable of contracting. We say as a matter of law, children do not have legal capacity. Because they do not have legal capacity and because a six year old isn't going to go down and file with the county attorney a charge of assault and battery, we create a special class for them and we say child abuse is special. There should be reporting from everybody when we know about child abuse. Because they have no legal capacity we overrule attorney-client, physician-patient, clergy and laymen privileges because they are a special category who can't protect themselves. Then with respect to the adults who are over sixty or the disabled, we pick and choose. Yes, some of them probably have legal capacity. Yes, some of them serve in this body. They don't need an intermediary but it is also the case that physically as a fact of life there is a higher degree of propensity for invalid individuals, for people subject to duress, to confinement and punishment and abuse and in recognition of that

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we create a crime of elderly abuse. But because they have legal capacity in a number of situations perhaps our standards shouldn't be as high with respect to violating existing privileges between professions. I don't think we have to pick and choose between professions...

SENATOR CLARK: You have one minute left.

SENATOR LANDIS: ...I think we need to distinguish between the people that we are protecting by these laws. Now with respect to the list of these, John DeCamp hasn't mentioned in any of this, the media who are covered and that is a fourth profession but he simply talks about the attorney and the clergy. That is the problem with picking and choosing between professions. We've covered four different areas and I think it makes more sense as a policy to choose who we are protecting. Ultimately doctors don't make sense because this bill talks about things other than physical abuse. It talks about intimidation, cruel confinement, mental distress, things that don't leave bruises, that don't leave broken arms, that don't leave evidence of physical abuse but which may well come out when attorneys talk about whether or not the great aunt who is ninety years old and kept in that small room....

SENATOR CLARK: Your time is up, Senator Landis.

SENATOR LANDIS: ...by an attorney was under intimidation when they signed the will. This amendment....

SENATOR CLARK: Your time is up. The question before the House is the adoption of the Landis amendment. All those in favor vote aye, opposed nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? We are voting on the Landis amendment to LB 335. Have you all voted? We can't hold the board open too much longer. Senator Landis, I'm going to record the vote. A Call of the House and a roll call vote? A Call of the House has been requested. All those in favor of a Call of the House will vote aye, opposed vote nay. Record the vote.

CLERK: 12 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All senators will return to their seats. All unauthorized personnel will leave the floor and everyone will check in, please. We are going to have to wait for the Budget Committee to come up. We've got nine members there. We only have two excused. Senator Duda, would you...thank you. Senator Kremer, will



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you check in, please. Senator Landis, did you want to take call ins or did you want to have a roll call? For the benefit of those that were not in here we are voting on the Landis amendment to 335.

CLERK: Senator Hoagland voting yes. Senator Barrett voting yes. Senator Stoney voting yes.

SENATOR CLARK: We are voting on the amendment to LB 335 by Senator Landis.

CLERK: Senator Warner voting yes. Senator Duda voting yes. Senator Goodrich voting yes.

SENATOR CLARK: The Clerk will record.

CLERK: 26 ayes, 6 nays, Mr. President, on adoption of the Landis amendment.

SENATOR CLARK: The Landis amendment is adopted. Anything further on the bill?

CLERK: Mr. President, Senators DeCamp and Beutler would now move to indefinitely postpone the bill. That would lay it over unless Senator Marsh as introducer agrees to take it up at this time.

SENATOR CLARK: Senator DeCamp, on the motion to indefinitely postpone.

SENATOR DeCAMP: Mr. President, members of the Legislature, I really don't want to do this but I'm going to and I don't know whether it will be successful but I will tell you this. The bill as Senator Landis has written it now and as Senator Hoagland has voted for it and some of the lawyers, I guarantee you, it is unconstitutional, guaranteed, absolute and I can get the opinion. You don't even have to be half bright to understand the separation of powers and, Senator Haberman, that is the answer to your question. The separation of powers concept, the control the Supreme Court has over lawyer conduct, so on and so forth, that is the basis for the attorney-client privilege. The doctor privilege is simply a common law development. So that is the answer why we could compel doctors to provide information and why I put doctors in the bill. I felt if we were going to get information from anywhere it would come from the doctors. I repeat, the Landis amendment has eliminated the one source of getting any information which is the medical profession which would have access to it. Instead the Landis amendment says now we'll get our information from attorneys by specifically repudiating or eliminating their attorney-client privilege which you cannot do and by ordering the priests

to come in and tell us what they learned in the confessional which they aren't going to do. So, I say under those conditions, you might as well kill the bill. What little you could have accomplished you chose to take out, getting some information from physicians. Those things which you can't accomplish you are determined to do. Now as I say, I don't care whether the bill is killed or not but I guarantee you, I can ask for an opinion and without even looking I know it is going to say those two areas are unconstitutional.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, I spoke a few minutes earlier in connection with Senator Landis' amendment and I indicated what a confused situation we are all dealing with. I think Senator DeCamp turns out to be basically correct on this piece of legislation, that because we have opened Pandora's box as to who is to report and who is not to report, we have interjected into what should be a relatively straightforward matter, a tremendous amount of confusion and controversy. I think it is totally wrong for this body to pass an adult reporting bill which exempts medical practitioners from coming forward with any reports whatsoever. If medical practitioners are not to come forward with reports, then how is information about which adult is abused and which adult is not abused to ever be developed? And actually the same may very well be true with lawyer reporting. I mean from time to time lawyers do come in contact with situations involving some type of adult abuse or some type of handicapped child, I'm sorry, handicapped adult abuse and if we exempt attorneys from the requirements then we are also missing the boat in that area. It seems to me that in light of the confusion that reigns on this measure, the indefinite postponement would be in order. If I felt that there was the will in the body to put physicians back in the measure to make certain that they were not exempted out, it would be a different story but every time we attempt to deal with one exemption and one nonexemption we end up more and more confused. So it strikes me that the time genuinely has come for us to ring down the curtain on this measure and to try it again in a different form in a different year and a different day.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I rise to support the motion to indefinitely postpone the bill. I opposed the Landis amendment. I think it was very unfortunate that it was adopted. And the current law in the State of Nebraska is, as I understand it, that physicians must report child abuse and I think that is the way it should be if we are going to have a reporting law for adults as well. If



physicians of the people who have access to this type of information there should be a legal duty on physicians to report and I think it is incredible that we repealed that duty. I think it is time to kill the bill.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I have sat silent on this particular issue up until this point in time and the more I listened the more I disliked the bill and curiously enough the reason that I have grown to dislike it more and more is not because I am worried about the lawyers or the medical people or the clergy who all have their lobbyists out here in the lobby but because this kind of a bill extends the principle of making potential criminals out of each and every person in this society despite the fact that they take no positive action whatsoever. They are walking around one day. They see something happen, they could be a criminal if they don't report it. I want to point out to you that in the two-hundred year history of this country we have rarely made it a criminal offense not to report a crime. Let me point out to you that for the crime of murder to my knowledge, there is no criminal penalty for not reporting a murder if you see it. There is no criminal penalty to my knowledge for not reporting a rape if you see it. There is no criminal penalty to my knowledge for not reporting robbery, aggravated assault or any number of other crimes that are potentially more serious than negligent child abuse, negligent abuse of the elderly or even some of the intentional abuses that may pertain to children or to the elderly. We are crossing over a very important line. We crossed over that line when we adopted the child abuse section, the line that makes it a criminal offense not to report. I think that was a big step and I think that is as far as we should go unless there is a really significant reason for proceeding further. I had an open house the other day and I asked some of my people about this particular bill, whether they should be required to report. You know the bill says everybody has to report, any other person, not just doctors, lawyers and clergy, everybody has to report. And I said to my people, should I require that you report? And one elderly lady, she shook her head a little bit and she said, "Well, maybe it would do some good." But she said, "Now how do I know for sure if I see somebody spank somebody or if I see somebody grab somebody by the arm or if I see somebody talking to somebody in a certain way, how do I know for sure if I should report? How do I know for sure what is necessary food, shelter and care?" Any you know she didn't say it very articulately but I think that is an important point. How do you know? And if the county attorney gets mad at

you and comes out and says, why didn't you report that? You say, I didn't know and he said, well you should have known. Come on, you're going down with me down to the county jail. And I think enacting a law like this has a second perfidious effect and that is it will encourage individuals to pursue their personal vendettas and incite the pursuit of those personal vendettas, vendettas involving estranged husbands and wives, involving estranged relatives, some of the bitterest types of things that exist in our society. A third reason why maybe this is not a good idea. Consider the possibility that a woman is having trouble controlling herself. She goes a little too far. She is upset. She realizes what she has done. She goes to her mother and says, "Mom, I've got to talk to you about this. I'm having a problem. What do I do?" I think that is fairly typical in our society. I think that is one of the first persons you should go to, your mother or your father. But by virtue of this law your mother or your father is now required to report you to the authorities.

SENATOR CLARK: You have one minute.

SENATOR BEUTLER: And I think we have to ask ourselves, "Is that what we want? Do we want to discourage these types of relationships?" You know to me if you are going to require somebody to report you should start on the very narrowest base and maybe say physicians report or social workers report but don't start in a broad sense and say everybody report. It is much too broad a law. I can stomach this sort of intrusion on privacy and on individual freedom in the case of child abuse to some extent because children can't communicate. There is a basis for distinction and it is also recognized that the problem is widespread. But the elderly by and large can communicate and by and large they have means of protecting himself and the evidence before this Legislature has not been...

SENATOR CLARK: Your time is up, Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Clark, has not been that the problem is as large with the elderly as it is with children and for those reasons, all those reasons, I encourage you not to extend criminal reporting further and to indefinitely postpone the bill. Thank you.

SENATOR CLARK: Senator Landis.

SENATOR LANDIS: I'd call the question.

SENATOR CLARK: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote

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aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on ceasing debate? Once more, have you all voted? Record the vote.

CLERK: 20 ayes, 12 nays to cease debate, Mr. President.

SENATOR CLARK: Debate has not ceased. Senator Marsh is next.

SENATOR MARSH: Thank you, Mr. Chairman, I'd like to clarify an issue. Several persons have said they think that the child abuse legislation is alright. With the adoption of Senator Landis' amendment, the child abuse legislation is set aside and it is alright. The adult abuse section which is still in clarifies the law to some degree. It does exempt the areas of at least lobbyist requested exemption. Without those exemptions I do not believe that LB 335 could be passed this year but since Senator Landis' amendment has been adopted, I believe it is in a form that we can live with it. It is a first step forward with more protection for senior citizens. I believe this is some legislation, it is not all that I had wished for, but I will not vote to indefinitely postpone and I will vote to advance LB 335 in its current form. Please help me do so.

SENATOR CLARK: Senator Newell.

SENATOR NEWELL: Mr. President and members of the body, I stand before you to urge you not to kill this bill for all the wrong reasons. In my opinion, this is one of the most symbolic of symbolic issues. The issue here is purely symbolism and I think that the issue really revolves around the question of what is right and fair and we haven't discussed that very much because what we have discussed are the more finer points of law. And those finer points are who should we mandate to inform the police and other competent individuals? I'm not all that clearly understood who those competent individuals are about child abuse. And I think that that, not only child abuse but adult abuse, and I think that makes this whole issue probably as symbolic as symbolic can be because we have talked. The argument has centered around physicians, clergy and those two groups are as concerned about child abuse and elderly abuse as any other. They are concerned, and I believe they will, in fact, report. I don't think that the issue here is whether or not we must mandate them to report or not mandate them to report. I think the issue of whether or not they deserve the rights of confidentiality is really kind of a bologna issue because

if they feel strongly, they will report. If they feel for some reason that they shouldn't, they won't and the practical reality of this situation is that there is no court in the world that is going to convict them and no one to even bring charges. But we have spent great amounts of time arguing about this legislation, who should be mandated, who should be required, how broadly we should construe this issue and I think for all the wrong reasons. Sure, we as a body and the public in general are frustrated about child abuse, about abuse of the elderly. Hell, we're frustrated about any kind of abuse and this legislation isn't going to make this issue all that much more clearly and we've been tinkering because some well meaning folks feel very strongly about this issue and we'll probably continue to tinker. Maybe it is better to kill this bill. I urge you not to do that. I don't like the bill the way it stands today. I think it was a mistake to amend it with the Landis amendment but frankly, I don't think we ought to kill it because the bill, unfortunately because of the problems that this society deals with, we'll be back next year and we will argue the same fine fine, fine points, these tremendously symbolic points, because that's all it is, all this symbolism will haunt us again next year. Let's try to resolve this debate as fairly as we possibly can this year. Thank you.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Beutler has saved me from having to talk about one aspect of the bill which has always been of concern to me and that is that an attempt is being made, probably not intentionally, to convert this to an informers' society where people become busybodies with the encouragement, not only the encouragement but the requirement of the law. But I have a concern since Senator Beutler covered that aspect very capably, on pages 7 and 8. The bottom of page 7 starts in line 24, Section 10, and it continues at the top of page 8. Then on page 8 in lines 20 and 25 we have similar language. This is what is known as the Christian Science amendment and I've fought it every time it has ever been attempted to be put in a bill. It got past me this time and I just hope that I'm correct in my belief that it is a part of the bill now. Oh, it's been struck already. Thank you, Senator Marsh.

SENATOR CLARK: Senator Beutler, for the second time. You don't want to talk again? Senator DeCamp, do you wish to close?

SENATOR DeCAMP: Mr. President, members of the Legislature, let me first of all reserve at least one or two minutes for Senator Beutler. Senator Newell said something, this is

symbolic and we spend a lot of time on it. Mr. President and fellow members, this is not symbolic, this is heavy. At least three or four major constitutional concepts are involved here, very heavy concepts. First of all, the legislation expands tremendously the concept in law, criminal law, being your brother's keeper, making subjective judgements yourself as to what other people's conduct should be. For example, let's take this front row of senators here. Among the six or seven of us we all had some different attitudes or opinions, including everybody else in here, on a fellow named Joe Soukup and as to whether he was abused by the state or not, whether he was treated improperly. Senator Kahle thought one way, Senator Chambers another, Johnny DeCamp another but that was a classic case of subjective judgments which is what this bill is all about as to what is proper or improper in treatment of another person. Now you say, well but yes, it is not going to cause us a problem. That will all be taken care of. Fine. What I am saying is you're moving into a huge new area constitutionally of saying we are implementing the be thy brother's keeper and use your own standards as to what they should live their lives and how they should be treated. Then you're upsetting another couple major constitutional concepts, freedom of religion which gets down as I said earlier to undoing the secrecy of the confessional. Now a lot of people consider that pretty fundamental. I mean, they would die for it and yet you are saying by a simple statute, a law, we're undoing that and we're saying, okay, priest, we don't care what you think you learned, you've got to come and report to the police if you learned something about child abuse or adult abuse. Finally, we're undoing the attorney-client privilege. Separation of powers involved there which has been pretty well developed for several hundred years and so this is not a small bill and it did justify a lot of debate and would justify a lot more. Like Senator Beutler, I was willing to venture into the area to begin to correct a problem, adult abuse, to the degree that it exists and...

SENATOR CLARK: You have two minutes left.

SENATOR DeCAMP: ...and to the degree we can do anything about it. Unfortunately we tried to make it so broad it just got out of hand and I hate to do this but I think it is the proper thing.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I just wanted to point out what I consider to be one last problem and a very difficult one with the bill. They tell me in the lobby that there is no exemption from libel and slander law in this bill. If

that is true, this is the situation that is set up. I see something happen. I don't know if it is child abuse or abuse of the elderly or not but I say, I have to report. The law says I have to report so I call the police and I report. Well it turns out it was nothing. In fact, it turns out it was ridiculous but the fellow I reported on said, hey, who was this person getting into my private life and they file a suit and they say, I want to know your name and I am suing you for \$10,000. I am suing you for slander. They can do it. Now is that what you want to subject every citizen in the state to? I don't see anything in the bill that prohibits that. Thank you.

SENATOR CLARK: The question before the House is the indefinite postponement of LB 335. All those in favor vote aye, opposed vote nay. Have you all voted? We're voting on the indefinite postponing of LB 335.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Senator DeCamp, I am going to call the vote. Once more, have you all voted before you get a Call of the House and a roll call vote? Once more, have you all voted? Record the vote. Senator DeCamp.

SENATOR DeCAMP: I'd ask for a Call of the House and then call ins.

SENATOR CLARK: A Call of the House has been requested. All those in favor of a Call of the House vote aye, opposed vote nay. Record the vote.

CLERK: 21 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All senators will check in please. All senators will return to their seats. All unauthorized personnel will leave the floor. Senator Chronister will go back to his chair and record in. Senator Kahle is coming to his chair to record in. Senator Wiitala. We will take call in votes. We are voting to indefinitely postpone 335.

CLERK: Senator Kahle voting yes.

SENATOR CLARK: All senators will be in their seats please.

CLERK: Senator Wiitala changing from no to yes.

SENATOR CLARK: The Clerk will record.

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CLERK: 25 ayes, 10 nays on the motion to indefinitely postpone the bill, Mr. President.

SENATOR CLARK: LB 335 is indefinitely postponed. We will now go to LB 267.

CLERK: Mr. President, with respect to LB 267, there are E & R amendments pending, Mr. President.

SENATOR CLARK: Senator Kilgarin, E & R amendments on 267.

SENATOR KILGARIN: I move the E & R amendments on LB 267.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. They are adopted.

CLERK: Mr. President, Senator Richard Peterson will now move to amend the bill. The amendment is found on page 496 of the Journal.

SENATOR CLARK: Senator Peterson.

SENATOR R. PETERSON: Yes, Mr. Speaker and fellow colleagues, this amendment would put back in extraordinary circumstances. The reason for adding the wording "extraordinary circumstances" is to provide the maximum amount of confidentiality to such proceedings thus encouraging participation while still not hampering the legal process. Many existing confidentiality laws contain similar wording. One example is the Section 71-2048 on hospital utilization review committees. An example of an extraordinary circumstance would be if a witness were to die and the only way to get the information to serve the ends of justice would be to subpoena peer review records. All information presented at peer review hearings in all but the rarest case would still be available to attorneys through normal discovery procedures. The purpose of making these words confidential is to encourage professionals to participate in these voluntary peer review programs. Many of these programs are conducted very informally and they are not meant to be courts of law but they do effectively settle disputes that might otherwise help clog the court dockets. We should do what we can to encourage the smooth operation of such voluntary systems. The trial attorneys and the dentists are in agreement on this and even helped...the attorneys helped draft this so I ask for its adoption.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Senator Peterson, I do have a couple of questions of you if you would just give me a little bit