

January 20, 1981

LB 245, 452-467

Senator Schmit, I have to close with this, you mentioned surplus of teachers. You had better look at the record today. There is not a surplus, only in a very few fields. In fact, there are shortages developing and by mid 1980's there are going to be very severe shortages for a number of reasons, and the Education Committee does not control the number of people who matriculate in a standing college. That is only controlled by the Regents and you know that. If you want to talk about surpluses, my figures show there are eight hundred and some veterinarians in this state and the veterinarians tell me that is a surplus. So let's get down to the issue. Is it Education or isn't it, and I request that the bill be rereferenced to the Education Committee. Thank you.

CLERK: Mr. President, the motion is that LB 245 be rereferred from the Agriculture and Environment Committee to the Education Committee.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed vote no. Call the roll, Mr. Clerk.

CLERK: (Roll call vote taken as found on page 287 of the Legislative Journal.)

SPEAKER MARVEL: Legislators, you are still supposed to be in your seats. The Clerk did not announce the vote.

CLERK: 19 ayes, 26 nays, Mr. President, on the motion.

SPEAKER MARVEL: Motion lost. I will raise the Call in just a minute. I want to make an announcement to the Chairmen. If you have hearings that are going to be heard next week, you have to get your notices in today. Okay, the Call is raised.

CLERK: Mr. President, new bills. (Read LB 452-467 by title. See pages 287-291 of the Legislative Journal.)

PRESIDENT: Senator Cullan, Public Health and Welfare Committee, Senator Cullan. Senator Cullan, the Public Health and Welfare Committee will meet at two o'clock. Senator Cullan, do you have a place? I can't get his attention. Senator Cullan, where do you want the meeting? I have already announced it at two o'clock. Do you want it underneath the...? Pardon? The Exec Board will meet in Room 1520 at two o'clock. Okay, 1517 for the Exec Board, two o'clock.

PRESIDENT: Okay, the Clerk will continue to read in bills for about ten minutes and then we will recess until about three-thirty.

LB 51, 63, 74, 94, 106, 113A, 150, 154,  
190, 195, 225, 261, 272, 281, 284A, 351,  
409, 418, 421, 426, 466, 229

March 12, 1981

Mr. President, some items to read in, LB 113A by Senator DeCamp. (Read LB 113A for the first time by title.) LB 284A by Senator DeCamp. (Read LB 284A for the first time by title.)

Your Enrolling Clerk respectfully reports that she has on this day presented to the Governor LB 51, 150, 195, 272, 409 and 154.

Your Committee on Education reports 63 indefinitely postponed. (Signed) Senator Koch.

Your Committee on Public Works reports 229 to General File and 94 General File with amendments. (Signed) Senator Kremer.)

Your Committee on Banking reports 421 to General File with amendments. (Signed) Senator DeCamp.

Your Committee on Public Health reports 261 and 466 to General File with amendments.

Mr. President, Senator Nichol would like to print amendments to LB 74 in the Journal. Banking, Commerce and Insurance Committee sets hearing. Senator Koch would like to print amendments to LB 190. Senator Kilgarin asks unanimous consent to be excused tomorrow. I have notice of priority bill designation of the Speaker. Your Committee on Banking, Commerce and Insurance reports 426 to General File with Amendments. (See pages 882 through 896 of the Legislative Journal.)

Mr. President, Senator Schmit would like to have the Ag and Environment Committee tomorrow morning at eight o'clock in Room 1520, Ag and Environment Committee tomorrow morning.

Mr. President, your Committee on Government, Military and Veterans Affairs reports 281 to General File with amendments; LB 351 General File; LB 418 to General File; LB 106 as indefinitely postponed; and LB 225 as indefinitely postponed. Those are all signed by Senator Kahle as Chairman.

Mr. President, the Business and Labor Committee will have an Exec Session at 1:00 p.m. today in Room 1019; Business and Labor at 1:00 p.m. today.

Mr. President, Senator Vard Johnson asks to be excused tomorrow.

March 19, 1981

LB 138, 202, 205, 344, 375,  
401, 466, 503, 504, 531

Mr. President, Senator DeCamp to print amendments to LB 531; Senator DeCamp to LB 138 and Senator Hoagland and Beutler to 205, all to be printed in the Journal. (See pages 1044-1048 of the Legislative Journal.)

Your committee on Judiciary whose chairman is Senator Nichol reports 202 to General File; 503 indefinitely postponed; 504 indefinitely postponed.

Mr. President, Senator Koch asks unanimous consent to add his name to LB 344, 375, 401; Senator Cullan to 466.

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: I believe that is all that I have, Mr. President.

SPEAKER MARVEL: Senator Fowler, would you like to adjourn us until nine-thirty.

SENATOR FOWLER: I move we adjourn until Monday at nine-thirty.

SPEAKER MARVEL: All in favor of adjourning until Monday, March 23, 1981, at nine-thirty say aye, opposed no. The motion is carried. We are adjourned.

Edited by

Arleen McCrory  
Arleen McCrory

March 30, 1981

LB 466

SPEAKER MARVEL: LB 466.

CLERK: Mr. President, LB 466 offered by Senator Labeledz and Senator Cullan. (Read title.) The bill was first read on January 20. It was referred to the Public Health and Welfare Committee. The bill was advanced to General File. There are committee amendments pending by Public Health and Welfare, Mr. President.

SPEAKER MARVEL: Senator Cullan. Senator Labeledz, do you wish to take the amendments?

SENATOR LABEDZ: I was just informed that Senator Cullan will not be here this afternoon so if I can possibly take the committee amendments.

SPEAKER MARVEL: Okay.

SENATOR LABEDZ: Thank you, Mr. Speaker. LB 466 was introduced by myself originally and Senator Cullan asked later that his name be added to the bill and I am very sorry that he isn't here but perhaps I can explain the committee amendments because the committee amendments are the bill. The proposed changes and the reasons I shall give you now why the committee amendments should be adopted by this body in order to make LB 466 a bill that I am sure that even those that oppose the movement that we have going on in Omaha will realize that what I am trying to do here is for the benefit of those people that do obtain abortions. The proposed changes in the Nebraska law that we are about to consider are an attempt to protect the health and safety of women who undergo abortions. This will be accomplished by requiring a physician who performs an abortion to be available for a period of not less than forty-eight hours for postoperative care. In the event a physician will not be available such care must be delegated to and accepted by another physician. This particular change is in the section of law which defines unprofessional conduct on the part of a physician. This is an appropriate definition of unprofessional conduct because I believe that any woman who goes through the experience of an abortion and subjects herself to the possibility of serious postoperative complications, she should be guaranteed that backup care will be provided in the event of any complications. The second committee amendment would define any residence, office or clinic of a private physician or association of physicians which performs ten or more abortions a week as a health clinic. The purpose of this amendment is to require that all private physicians' offices, residences and clinics which perform ten or more abortions per week be considered a health clinic and thus subject to the regulations and the standards governing health clinics which are by the State Department

of Health and I think this is very essential because right now we have no rules and regulations on an abortion, what I consider a clinic although they call it a center. In Section 6 (a) of the regulations and standards governing health clinics each health clinic is required to establish a working relationship with other health care facilities and social services in order to provide a continuity of services and care for its clients. These regulations state that all health clinics shall maintain written documents showing evidence of such relationships. Now I think there is two amendments, three, actually four that we are considering right now and I will go in detail after the committee amendments are adopted but I do have other information here and I don't want to take up too much time because I am sure there is going to be a lot of people that will want to talk on the matter but we also want to require that facilities which perform ten or more abortions per week be licensed as a health clinic. We are also attempting to distinguish those facilities which perform a large number of abortions on a continual basis from those who perform this procedure on a limited basis. Those offices, residences or clinics of a private physician which perform ten or more abortions per week should be defined as a clinic and subject to the regulations and standards governing health clinics and I have articles here from the World Herald that were put out in the spring of 1975 where the clinic in Omaha stated that whenever there was any complications on abortion procedures that the patient could go to the Medical Center for emergency treatment but in parts of the article it says here, "We would not wish to imply or engage in any way to become a medical backup for the doctor at the Lady's Center, says Douglas S. Peters, University Hospital Administrator. Our institution is not seeking that kind of relationship because I believe it generally is not consistent with our basic mission and purpose. Our overriding purpose is the education of students in the health sciences." Doctor Epp of course is the doctor that performs the abortions in Omaha and he still stands by firmly that if there are complications he can send them to the Medical Center. Doctor Scott said he told Doctor Epp that the emergency room would treat Lady Center patients if they came there because it cares for all emergencies. Doctor Scott said the first he knew that the Lady Center planned to use NU as its emergency referral when he was told by a World Herald reporter. Doctor Epp said that it was decided to send patients primarily to that Medical Center because it was close and has a complete emergency room as any other hospital. It goes on to say that if patients will be told if complications arise later, they should contact the Lady Center and the staff would decide whether hospitalization would be necessary or would be required. There are many many reasons besides the NU response

that I just gave you but I think most important, in January 1973 when the decision was made on abortion the statement of abortion guidelines, approved by the House of Delegates in May of that same year, the Nebraska Medical Association stated and approved, "All abortions should be performed in a hospital or in a facility that offers the basic safeguards provided by hospital admission and has immediate hospital backup. Such a facility should be accredited by the Joint Commission on Accreditation of Hospitals or licensed by the state." And this is what we are trying to do here. We are not saying that abortions cannot be performed at the clinic or at the center or whatever you call it. We are saying that we want them licensed by the state so they would be regulated and that there is proper followup care. I urge the adoption of the committee amendments.

SPEAKER MARVEL: Senator Wesely, do you wish to speak to the committee amendments?

SENATOR WESELY: Yes, Mr. Speaker, members of the body, we did take a look at the bill as introduced by Senator Labedz and found it to be very unclear. The committee amendments clarify the fact that as far as the section dealing with physician responsibility and the fact that they may lose their license over certain acts of unprofessional conduct, it would add the provision of postcare for abortions that were performed by the physician. So in a sense we clarified that section and made it a fact that a physician would have to provide that care or be threatened I think with the loss of their license also. The question was raised as to licensing of a clinic or a health facility and there were two proposals. One was to place it under the Health Department. The other one was to include it in certificate of need. The idea including abortion clinics in certificate of need was thought not to be appropriate and thus was not included in the committee amendments but the idea that clinics should be regulated as other clinics are, even though they may perform abortions, was thought to be a legitimate purpose and thus, was included in the committee amendments. Hopefully that helps explain what the committee did with the bill. Thank you.

SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, for the record I want this body to be very clear of what is before us, both in the amendments and in the proposal itself. It is another mechanism to harass the woman and the physician who choose to perform an abortion or to have an abortion, to participate in any manner in what is a legal procedure. Originally the way the wording for this piece of legislation was conceived was to put all people who had operations, surgery. Only the medical doctors who do tonsillectomies did not choose to be in this. Of course, this body may or may not be aware that there are more complications arising from

tonsillectomies than there are following abortions but that is not the issue, is it. The issue is, harass the woman, harass the physician who chooses this medical procedure as part of the physician's service to the community and I do term it "service to the community." No one is forced to have an abortion. Those who do not believe in abortion have their choice. However, the person who does believe in the right to choose an abortion does not have a free choice. We keep trying to put one more stumbling block, one more stumbling block, one more bit of harassment. It would suit a number of persons in this legislative body if we harassed all the physicians in the state who do perform abortions so much that they would no longer perform abortions. That is not what we are really discussing. Oh, but we are. We are discussing why this bill was introduced, not as Senator Labedz has tried to indicate, purely for the safety and health of patients. No, we would include the physicians who perform tonsillectomies and other forms of surgery. The medical profession has managed up until this time to quite successfully manage their physicians but when the topic came into the abortion arena, suddenly we will try to do anything and everything, legal or otherwise. We will pass legislation and then discover it really is unconstitutional. This proposal should be indefinitely postponed. Mr. Speaker, I move that LB 466 be indefinitely postponed.

SPEAKER MARVEL: Yes, ma'am. We take that up first and then we take up the other item. Senator Vard Johnson, do you want to discuss the committee amendments?

SENATOR V. JOHNSON: Yes. I just had a couple of questions of Senator Labedz, Mr. Speaker. I guess, Senator Labedz, the first question I have is this. Maybe you are the wrong person to ask the question of actually because I am talking about the committee amendments but I am really wondering why the number "10" was selected. Why is 10 sort of the bench mark for determining when or when not a physician's office where several abortions are performed shall be registered as a health clinic?

SENATOR LABEDZ: Well, of course we debated a long time on the number, Senator Johnson, but in any clinic, abortion clinic and I am going to call it a clinic even though they claim they are not a clinic. They claim that there is other medical procedures performed there but in telephone calls to the center, to the clinic or whatever, we know that that is strictly an abortion clinic and counselling service and so forth. So I would say we picked twenty or ten, whatever the amount we wanted would be because then we determined by that it is definitely, primarily a clinic that performs abortion, if it is any more than ten.

March 30, 1981

LB 466

SENATOR V. JOHNSON: Okay, so what you are really suggesting then, Senator Labeledz, is that if in a physician's office on a fairly infrequent basis that physician might perform an abortion, because that physician actually engages in a lot of other procedures, that that office is not to be treated as a clinic but when that office, when he proceeds to perform a significant number of abortions, i.e., ten a week or more, that is a pretty good telltale that that is an abortion facility?

SENATOR LABEDZ: That is correct.

SENATOR V. JOHNSON: Okay. Now the second question is maybe a little more difficult. I really have...these are good faith questions. Obviously over the years we made the decision to totally exempt physicians' offices from ever being considered as health clinics even though the physician's office is performing some minor surgery, treating, you know, burns and the like, and yet we have decided that for the performance of an abortion when there are more than ten or more, when it is essentially an abortion facility, it is to be treated as a health clinic. Is there some rational basis for distinguishing the physician's office where other surgical procedures are performed from the abortion facility?

SENATOR LABEDZ: Yes, definitely so because we are talking about follow-up care after an abortion is performed. In the particular clinic that we have in Omaha, and I don't care where it is located, I would have done the same thing if this would have been Lincoln or Grand Island or Scottsbluff or any place. Any place that has or any clinic, any center that performs more than ten abortions should come under the rules and regulations which is proper medical follow-up care, record keeping and so forth and I am surprised that anyone that opposes what I have been trying to do would not consider these amendments as essential for proper follow-up care, rules and regulations of the state and as I read to you and I have here a definition of a clinic that I think you would be interested in but I won't take up your time. On my own time I will show you the definition of a clinic and why I think it is essential that the abortion performed, ten or more at any facility, should be under license by the State of Nebraska and the definition will explain why.

SENATOR V. JOHNSON: Thank you, Senator Labeledz.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. President, Senators, I only rise to say that I am simply amazed that Senator Marsh, who has fought so long and so hard for legalized abortions and whose main argument



has been, let's do away with the back room butchershops, would be opposed to an amendment that is going to guarantee to these young fourteen and fifteen year olds that go into a clinic or a center, to get an abortion without their parents' knowledge, without telling anyone that except maybe their best friend. I am amazed that anyone who has argued so hard and so long to do away with butchershops would be opposed to an amendment that simply says, if you are going to have legalized abortion, at least for the sake of the young girls that are going there, usually without any counselling or advice from their parents, since the Supreme Court says they don't even have to advise their parents, that they would not want the proper medical care for that young girl after she has had the abortion in a franchised center or clinic, whose main purpose obviously is not medicine but abortion for profit and I just can't believe in the sincerity of the arguments of legalized abortion is going to do away with butchershops when they don't want to go along with proper follow-up care for a young girl who has had an abortion and that she should be left with just a staff of who knows who to tell her, go here or go there because the doctor that did the abortion has left town. Thank you, Mr. President.

SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Thank you, Mr. Speaker. If, in fact, we were talking about what Senator Higgins thinks we are talking about I would have to agree with her. But you see, we are not. She is talking about a physician's office where abortions are being performed. No one has indicated that this physician is not doing his job well. No one has indicated that the medical association has asked for a change. No, in fact, the strongest anti-choice persons of our legislative body are supporting this proposed piece of legislation. If it were not harassment, that would be an entirely different story but it is nothing other than harassment, confusion, deliberate roadblocks in the way for someone to make a personal choice. I am aware that Senator Labeledz and Senator Marge Higgins are not supporters of choice. Most of the listening audience, including this legislative floor, is aware that I am a proponent for choice and that is what it boils down to, a matter of choice, another stumbling block in the way of someone who has made a choice to choose an abortion. Why? They don't want it where it is. Are you aware that we do not have abortion available in western Nebraska? No, the patient must go outstate or else come east because communities have made it difficult, more expensive. I don't think it ought to be an easy choice. I don't think it is an easy choice but we should not put additional stumbling

blocks in the path of someone who does choose to make that choice. Again, I say, no one is forced to have an abortion so those who do not wish to have an abortion have their choice but the individuals who choose to have an abortion have additional stumbling blocks, if this legislation is passed, placed in the way. Senator Labedz and Senator Higgins have a perfect right to express their point of view but when it infringes on the rights of others, that should be the line which could and should be drawn so that others who do not share their point of view have a choice, have the freedom to express their concern, their religious convictions. It just does not happen to coincide with someone else's. They have that right. I believe and this legislative body has the opportunity to allow choice for both sides, not simply allow those who are anti-choice to, in fact, have their choice.

SENATOR CLARK PRESIDING

SENATOR CLARK: The motion before the House is the committee amendments. Bernice.

SENATOR LABEDZ: I will waive closing.

SENATOR CLARK: We are closing. You waive closing?

SENATOR LABEDZ: Yes, and I move for the advancement of the committee amendments.

SENATOR CLARK: All right, the question before the House is the adoption of committee amendments. All those in favor vote aye, opposed vote nay. Have you all voted? Once more, have you all voted? Senator Labedz.

SENATOR LABEDZ: I am reluctant to do it but I am afraid I will have to have a Call of the House and I will take call-in votes. I will take call-in votes.

SENATOR CLARK: A Call of the House has been requested. That is the only way you can get a call-in vote. All those in favor of a Call vote aye. Record.

CLERK: 14 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All the senators will return to their seats. The question before the House is the adoption of the committee amendments to 466. ...to take call-in votes.

CLERK: Senator Goodrich voting yes. Senator Dworak voting yes. Senator Chronister voting yes.

SENATOR CLARK: Record the vote.

CLERK: 26 ayes, 2 nays, Mr. President, on adoption of committee amendments.

SENATOR CLARK: The committee amendments are adopted. On the bill itself. Senator Labedz. Raise the Call. The Call is raised.

SENATOR LABEDZ: Thank you, Mr. President. Thank you for adopting the committee amendments because the committee amendments are the bill. In approving these amendments we have assured those individuals who utilize these facilities that safe procedures are available and proper follow-up care is provided and I totally agree with Senator Higgins in what she has to say and I am a little disappointed, of course, in what Senator Marsh had to say because I truly believe that this is not harassment. It is not harassment for the woman. It is protection for the woman and for many many years before abortion was legalized, there was many a many a time and even since then that I have been told over and over that if the Human Life Amendment in Congress is adopted that we will be going back to back alley abortions and to coat hangar abortions but here what I am trying to do is license a facility as a clinic, to offer proper follow-up care for the patient. I believe these regulations are reasonable health regulations which would apply to abortions that are performed in the first trimester. In the Supreme Court case of Connecticut vs. Manillo, 1975, a statute which ascribed an abortion by a nonphysician was upheld. The court stated that Roe vs. Wade teaches that a state physician, to terminate her pregnancy during the first trimester because neither its interest in maternal health nor its interest in the potential life for the fetus is sufficiently great at that stage but the insufficiency of the state's interest in maternal health is predicated upon the first trimester's abortion being as safe for a woman as normal childbirth at term and that predicate holds true only if the abortion is performed by a medically competent personnel under conditions ensuring maximum safety for the woman. What the committee amendments also did which is now the bill, it attempts to do is to ensure maximum safety for women who undergo abortion in facilities which perform ten or more abortions a week. These amendments are the bill now. Also will ensure that a doctor will be available for any complications for a period of up to forty-eight hours and, believe me, if I could show you some letters that I received from parents that their teenaged daughter received an abortion that they didn't know anything about and later, because of complications, they had to inform their parents and be taken to a hospital. And I think when I was on the floor not too long ago I mentioned in the western part

of Nebraska a young girl, fifteen years of age, came to Omaha and obtained an abortion. After she was released from the clinic or the center or the doctor's office, she drove two hundred and eighty-five miles and at the same time she was driving home with two of her friends, she was bleeding, vomiting and was very dehydrated before she got home to her family doctor who at that point was not able to administer any blood transfusions or anything without notifying the parents. Now this is absolutely what we are trying to get at. We are trying to protect those people that come miles and miles away and they have no proper follow-up medical care, even in Omaha, where the abortions are performed and as I say, I am not doing this for Omaha. I would do it for any part of the state and if I could do it for any other state in the union I would do it. We are just asking that the clinic be licensed as a clinic or the center and that the rules and regulations of the state with proper follow-up medical care is administered or given to every patient. When she walks through that door she should be assured that if there are any complications that she will have the follow-up care that is necessary, especially when they are young children, minors under age and I urge the passage of LB 466, the advancement of the bill to E & R initial, and I do not support...I'm sorry, we are talking on the kill motion of Senator Marsh and I think what we have to do first is defeat Senator Marsh's move to indefinitely postpone LB 466.

SENATOR CLARK: Motion on the desk.

CLERK: Mr. President, Senator Marsh moves to indefinitely postpone the bill.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, Senator Labeledz keeps trying to say she is guaranteeing protection for these young women. There is no way to guarantee protection when a young teenager drives into Omaha because there are no abortion facilities outstate and chooses to leave Omaha. What possible good does it do to say the doctor has to remain in Omaha when the young woman has driven however many miles that Senator Labeledz was telling us about? That is no guarantee for the patient. This is a farce. There is not a doctor in this legislative body but we are saying we know much more than the medical profession how this procedure should be handled, and if this is a medical procedure which takes place in Omaha, every Omaha hospital has an emergency room which can and should take care of a medical emergency, whether that medical emergency is following an appendectomy, a gall bladder operation, a prostate operation, a tonsillectomy or any other medical procedure. That is what a medical

emergency room is equipped to do. There are no abortions being performed after the first trimester in a doctor's office. So you see, the abortion procedure is safer than childbirth during the first trimester. We again are simply putting problems, complications in the way because a group of senators do not like abortions. We want to make it difficult. We want to discourage people, not me, but some senators in this body are trying to say we can stop some abortions if we make it more difficult. It is very contradictory to say I am providing safeguards when there are no safeguards for the woman involved. It is simply a harassment exercise for a doctor who is courageous enough to perform medically safe abortions for persons who need an abortion, not what Senator Labeledz wants, not what Senator Higgins wants, not what a number of this body want but a legal procedure nevertheless. It is so unrealistic to think this body continues to pass legislation which gives a perfect opportunity for more legal opportunities to go to the Supreme Court. We end up, the Nebraska people end up paying when this body passes legislation which is unconstitutional. Then the State of Nebraska has to pick up court costs for the attorneys which take this case to court and I will guarantee you, if you pass LB 466, it will end up in court again. It is perfect fodder to be taken to court, a measure which is harassment, which you know and I know is harassment, which is not providing the safeguards that the introducer says are there. It is simply another mechanism, a facade, and I don't like to have that be what is fostered off on the Nebraska citizens as being good legislation. I think the medical profession is the person, the group of individuals who should be making medical decisions, not lay persons. We do not have a medical specialist in this body. Why? Probably our salary is part of the reason among other things but to deliberately go ahead and pass LB 466 when we know it has unconstitutional provisions is not playing fair with the citizens of this state. We, you and I, help pay the costs when we pass pieces of legislation which are unconstitutional but so do the other citizens in this state. Abortion during the first trimester is a legal medical procedure. The majority of the citizens of this state agree that that should be permissible under circumstances during the first trimester. The Supreme Court of the land has said it is a legal medical procedure and yet this body keeps trying to put more legislation on its books which is unconstitutional, which will cost the State of Nebraska a great amount of money to simply take the case to court and when we lose again as we have since I have been in this body, we then pick up the cost for the attorneys which bring the case to court. Don't you have the courage to vote what you know is the right thing to do? Please kill LB 466 and let's go on with legislation that needs to be passed in this legislative session. We have

\$70,000,000 which the citizens of Nebraska have a right to have returned to them. There are many other pieces of important legislation, water legislation, appropriations for the State of Nebraska, but to clutter up our time and our lawbooks with a piece of legislation, which will be called unconstitutional when it gets to court, and if it is passed I am sure you will have a court case within the next year. To deliberately subject the peoples of Nebraska to that unnecessary expense is foolhardy but it is most discriminatory to the persons in this state to deliberately withdraw a choice from many individuals. Western Nebraska citizens as well as eastern Nebraska citizens should have a choice, not have it completely taken out of our state so they go to another state and have even further to travel. I move for the indefinite postponement of LB 466.

SENATOR CLARK: Is that your opening and your closing?

SENATOR MARSH: Are you saying there are no other lights?

SENATOR CLARK: There are no other lights on.

SENATOR MARSH: That is my opening and my closing if there are no other lights.

SENATOR CLARK: All right, then we will take a vote on it. The question before the House is the indefinite postponement of LB 466. All those in favor vote aye. All those opposed vote nay. Have you all voted? Have you all voted? Record the vote. Senator Marsh.

SENATOR MARSH: ...allowing this to to into the record, it will be most useful when the case comes to court.

CLERK: 3 ayes, 24 nays, Mr. President. Did she request a record?

SENATOR CLARK: Did you want a record vote? All right, a record vote.

CLERK: (Read record vote as found on page 1197 of the Legislative Journal.)

SENATOR CLARK: While he is counting up the vote I might tell you that the press secretary has just died, that the President is in exploratory surgery. His left lung is collapsed and they are in after the bullet at the present time.

CLERK: 4 ayes, 33 nays, Mr. President, on the motion to indefinitely postpone.

March 30, 1981

LB 466, 284

SENATOR CLARK: Motion failed. Senator Labedz, would you like to adjourn us until nine o'clock tomorrow morning? We have something to read in first, please.

CLERK: Mr. President, Senator Vickers would like to print amendments to LB 284 in the Journal. (See pages 1198-1200 of the Legislative Journal.)

The Ag and Environment Committee will meet tomorrow morning at eight-thirty in Room 1105.

Mr. President, Senator Hoagland moves to reconsider the body's action in the indefinite postponement of LB 111. That is all that I have, Mr. President.

SENATOR CLARK: Senator Labedz, would you like to adjourn us until nine o'clock tomorrow morning?

SENATOR LABEDZ: Mr. Chairman, I would first ask for a reason that we are adjourning at 4:07 p.m.? I would like to see this bill advanced. There was not that much opposition...

SENATOR CLARK: The reason is the Speaker said to adjourn. Do you want to adjourn us?

SENATOR LABEDZ: Yes, I am afraid I will have to. Thank you. I move that we adjourn until tomorrow morning at nine o'clock, March 31.

SENATOR CLARK: Thank you. You heard the motion. All those in favor say aye, opposed nay. We are adjourned.

Edited by *Lavera Benischek*  
Lavera Benischek

April 1, 1981

LB 132, 466

CLERK: Senator Clark voting aye.

SENATOR CLARK: Record the vote.

CLERK: 37 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: Motion carried. The bill is advanced. 466.

CLERK: Mr. President, LB 466 was introduced by Senators Cullan and Labedz. Read title. The bill was referred to Public Health for hearing. It was advanced to General File on March 30th of this year. There was a motion to adopt committee amendments. That prevailed. I have nothing further on the bill at this time, Mr. President.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: Thank you Mr. Chairman. When we were discussing LB 466 the last time Senator Johnson asked me a question and I would like to give him a clear reason, which I hope will satisfy him, on why and how we selected ten abortions per week. I would like to first address it to Senator Johnson, the bill on line, identifies ten or more abortions per week as the plateau in which Nebraska clinic licensing laws would be made available or made applicable even if performed in the office of a private physician. Senator Johnson has asked how the plateau of ten or more per week was selected. I believe that his was a good question and therefore I think deserves a good answer. The ten abortions per week figure was not arbitrarily selected. The clear purpose of this portion of LB 466 is to bring the large abortion clinics within the regulatory boundaries of the state statutes governing medical clinics. I do have the rules and regulations here on the . . . put out by the Health Department on clinics and that is one of the very reasons we thought it was very essential that they be licensed as a clinic. Number one, when a physician begins to perform more than ten abortions per week, in his or her private office, he or she creates a medical facility that differs dramatically from a private physicians office. This is exemplified by evidence given in Nebraska District Court during trial of the case dealing with LB 38 in 1978 and LB 316 in 1979 wherein there was testimony that following: (A) That Womens Services one of Nebraska only two abortion clinics in which is operated from a private physicians office engaged in virtually not counselling of its abortion patients. (B) That physicians at Womens Services and Ladies Center, Nebraska's other abortion clinic, which also operates out of the private office of a



physician often never see the abortion patient until she is on the procedure table. (C) That both clinics were performing 45 and sometimes more abortions per week. I draw this information from the brief of the Attorney General recently filed. . . brief of the Attorney General recently filed in the Supreme Court. Number 2, the exception for the private office of the physician from state laws regulating medical clinics was never intended to exclude medical facilities where there is little or no doctor-patient relationship as in the case with an abortion clinic. Number three, where a physician in the operation of his private office performs a small number of abortions in the same manner he treats other patients, then the regulations imposed on the clinics are not warranted. We select the number ten per week since it will clearly cover the major abortion clinics but will not affect the 20 or 30 physicians scattered around the state, who on a very limited basis, perform abortions in their private office. We believe, number five, that the evidence given to Judge Urbom in the previously discussed trial and the expose' done by the Chicago Sun Times of the medical practices of abortion clinics makes it clear that abortion patients who go to clinics need greater protection than those who seek treatment at a private physicians office. I think that was a long and detailed explanation of the reason why we selected ten abortions per week. I certainly hope that it satisfies Senator Johnson. Thank you very much.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have a couple of questions I would like to ask Senator Labedz about the committee amendments. Senator Labedz in the section that you were dealing with the ten abortions per week, what does week mean? Since you are trying to establish a record. Does it mean a five day period? A seven day period or from one day in a week to the corresponding day in the next week, or just what does that period mean?

SENATOR LABEDZ: I'm sure that we intended it to mean seven days a week because there are times in the Omaha Abortion Clinic that they are performing abortions on Saturday, other times they are not. So, a week would be seven days.

SENATOR CHAMBERS: All right, now when you put the language unless ten or more abortions as defined and so forth per week are performed. Ten or more per week for how long a period? Or ten in any given week?

SENATOR LABEDZ: In any given week.

SENATOR CHAMBERS: I don't think that is what the language says.

SENATOR LABEDZ: Well we can certainly change it if it is wrong.

SENATOR CHAMBERS: So what your intent is, is that if one of these 32 or whatever number of doctors you mentioned were scattered around the state should encounter a situation where he would perform ten abortions in any given week then his office would have to be licensed under this bill from then on, isn't that correct?

SENATOR LABEDZ: That is correct.

SENATOR CHAMBERS: Is that your intention?

SENATOR LABEDZ: Yes, sir.

SENATOR CHAMBERS: All right so, for the record, thank you Senator Labedz. What I have perceived or have been told that this bill means is that if in any given seven day period ten abortions are performed in an office that office must be licensed. I would advise the members of the legislature to consider that possibility as being what you desire to have in a law. There are difficulties that used to be encountered only in the cities. But now some of these problems are coming to the rural areas. There could be a set of circumstances where a doctor rather than going through the problem of having a license would simply turn these young rural girls away and tell them go to Omaha or go to Lincoln. And they would say, doctor I can't go to Omaha or Lincoln very easily. He would say well you have coat hangers at home haven't you? She would say, by God, I didn't think of that. There will be the solution to that particular problem probably an ultimate solution, and a final solution. I just find it difficult for myself to parse this issue as you would parse a sentence. Either it is totally wrong to give abortions or it is not. Either there should be licensure of those who give abortions or there should not. But to take a principle which is supposedly based on morality and a concern for life, and those who say that life begins at the moment or at the instance of conception for them to play a numbers game is totally beyond my ability to understand. If it is a moral principle the principle obtains that if there is one abortion in a year, or a thousand in a day. I don't understand this kind of compromising by those people who were so rigid on the issue. It is not a compromise to me because I don't accept what they say about a human being being in existence from the instant of conception. So, though it is the end of the day and I know that everybody is tired and I know that you are probably somewhat tired of listening to me, but you keep bringing up these issues one after the other in which I have an

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LB 466

interest so I have no choice. Do you want to create the situation that Senator Labedz described? Can you for once vote your convictions. . . .

SENATOR CLARK: You have about 45 seconds.

SENATOR CHAMBERS: . . . and not what you think a few people would be irritated with you for doing. You ought to consider this bill and I think definitely not approve of it in the present form. I will pursue the matter at a later date.

SENATOR CLARK: Senator Haberman. Senator Cullan.

SENATOR CULLAN: I call the question.

SENATOR CLARK: The question has been called for. Do I see five hands? I don't see five hands. I do now. The question is to cease debate. All those in favor vote aye, those opposed vote no. Have you all voted on ceasing debate? Have you all voted? Record the vote.

CLERK: 16 ayes, 3 nays Mr. President to cease debate.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Mr. Speaker, Senator Labedz, for the record I would like to ask you some questions.

SENATOR LABEDZ: Yes, ma'am.

SENATOR MARSH: How many areas of state statutes describe for the medical profession, unprofessional conduct?

SENATOR LABEDZ: How many sections?

SENATOR MARSH: Yes.

SENATOR LABEDZ: I don't know Senator Marsh, but I can certainly find out and get the information to you immediately. I'd have to go through the statutes.

SENATOR MARSH: Up until now has that area been left to the medical profession to police their own ranks?

SENATOR LABEDZ: Yes, and as I said in the beginning I have in front of me here a six or seven paged rules and regulations of the clinic set out by the Department of Health. What we are trying to do here is license the abortion centers as clinics so that we can follow. . . .

SENATOR MARSH: Senator Labeledz, what you said in the original bill was that you wanted to insert into legislation areas of unprofessional conduct and you wanted to include medical-surgical procedures. Then suddenly when you discovered that that would not just incorporate abortion and that physicians across the state did not like your proposal and would not live with your proposal, at that time you decided to only leave it for abortions, is that correct?

SENATOR LABEDZ: Is that a question?

SENATOR MARSH: Yes, that is a question.

SENATOR LABEDZ: Can I answer it in detail.

SENATOR MARSH: You may answer yes or no.

SENATOR LABEDZ: Well it is very difficult to answer yes or no to your question. It had several sections to it.

SENATOR MARSH: Did you originally intend to only incorporate it for abortion issues?

SENATOR CLARK: Lets not have a dialogue, lets have the question and the answer.

SENATOR LABEDZ: I can not answer that yes or not without going into detail.

SENATOR MARSH: Thank you very much.

SENATOR LABEDZ: It is the committee amendments that we are voting on, not the bill. . . . . I mean the committee amendment is the bill.

SENATOR MARSH: Therefore it is proper to discuss the bill since the committee amendments are the bill.

SENATOR LABEDZ: That is correct.

SENATOR MARSH: The original bill was. . . .

SENATOR LABEDZ: State your question again.

SENATOR MARSH: I'm not asking anything further. Thank you, Senator Labeledz. In fact, the original intent was to incorporate what physicians should do, although we had not entered into that category previously. It was only after it was discovered that the medical profession did not appreciate having the Legislature, in detail, trample on their area that

Senator Labedz backed off and asked to have only abortion procedures involved in the proposal of LB466. I do not support the committee amendments. I think the original intent should show the medical profession what was intended that the legislature now knows more than the medical profession, according to Senator Labedz, about what should be unprofessional conduct. In fact, the tonsillectomies which are performed across the state have a higher mortality rate in some areas than the procedure which Senator Labedz is trying to force into our statutes. Since we do not have a member of the medical profession within our legislative body, and since, in most other states the medical profession itself has set the standards, should set the standards because those are the expert persons in the field. As a member of the advisory. . . .

SENATOR CLARK: You have one minute.

SENATOR MARSH: . . . committee to the American College of Obstetrics and Gynecology, I am aware that this is not what it is purported to be, that it is harassment, as I have previously stated, that the fact that it only applies to one type of medical procedure is the basis for my questions to the Attorney General's office. That if it were in its original form it might be constitutional. In the form which is being requested now by this legislative body I feel that it is not Constitutional for it is only taking one procedure, one medical procedure and saying, this legislative body is the expert.

SENATOR CLARK: Your time is up, Senator Marsh.

SENATOR MARSH: Thank you, Senator Clark.

SENATOR CLARK: The question before the House is the advancement of 466. All those in favor vote aye, opposed vote nay. Did you want to close, Senator Labedz? I'm sorry, there is a motion on the desk.

CLERK: Mr. President, Senator Chambers moves that LB 466 be indefinitely postponed.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, this is not the beginning of a series of motions. This is a motion that I have to offer on this bill. There is no way I could get around offering it. I think that it is an unjust piece of legislation. I think that it is not going to do anything to hurt the doctors, if that is what its intent and its thrust is designed to be. It is going to strike at the

ones who are least in a position to be struck at. All of these anti-abortion bills fit into that category. I don't think that the committee amendments which basically are the bill . . . .

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Excuse me, for what purpose do you arise Senator Labedz?

SENATOR LABEDZ: We already on this stage, General File have already had an indefinite postponement by Senator Marsh. Can it be done twice at this stage?

SENATOR CHAMBERS: It can be done everyday. It can be done once everyday, if the bill comes up. Everyday the bill comes up. I have had it done to mine and there is no rule against it. It can't be done twice on the same day, I don't believe.

SPEAKER MARVEL: The Chair, this kind of decision could go either way. The Chair rules in favor of Senator Chambers.

SENATOR CHAMBERS: I'll tell you what I'll do Mr. Chairman. I will make the motion on Select because I don't think that I would have 25 votes here and I won't have it there, but I will let the thing go for today.

SPEAKER MARVEL: Senator Cullan, do you wish to be recognized? Senator Labedz, there are no other lights.

SENATOR LABEDZ: In the interest of time there will be no closing. I just move for the adoption or advancement rather.

SPEAKER MARVEL: The motion is to advance 466. All those in favor of the motion vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 26 ayes, 7 nays on the motion to advance the bill Mr. President.

SPEAKER MARVEL: Motion is carried the bill is advanced. Does the body want to continue or do you want to adjourn? Pardon. Okay, we will go with one more bill. The Clerk will read LB 129. Is that the one.

CLERK: Mr. President, LB 129 (read title). The bill was read on January 13, referred to Judiciary for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President, by the Judiciary Committee.

SPEAKER MARVEL: Senator Nichol. Committee amendments to LB 129, Senator Nichol.

April 6, 1981

LR 50  
LB 40, 22A, 158A, 317A,  
298, 253, 253A, 271,  
132, 466, 174, 351, 125,  
167

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The opening prayer will be given by  
Senator Rumery.

SENATOR RUMERY: Offered prayer.

SPEAKER MARVEL: Roll call. Please record your presence.  
While we are in the process of the roll call may I indicate  
to you that today is Senator Kahle's birthday. We wish you  
all the best. Record.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Do you have anything under three?

CLERK: Mr. President, your committee on E & R respectfully  
reports that we have carefully examined and reviewed LB 40  
and recommend the same be placed on Select File. 22A, 158A,  
317A, 298, 253, 253A. . . .

SPEAKER MARVEL: Just a minute...(Gavel) okay.

CLERK: .....271, 132, 466 all placed on Select File, (signed)  
Senator Kilgarin, Chair.

Mr. President, LB 174, 351, 446, 125 and LR 50 are ready  
for your signature.

SPEAKER MARVEL: While the Legislature is in session and  
capable of transaction business, I am about to sign and  
do sign LB 174, 351, 446, 125, and LR 50.

CLERK: Mr. President, I have two communications from the  
Governor. (See page 1290-91 of the Legislative Journal).

Mr. President, Senator Newell moves to return LB 167 to  
Select File for a specific amendment. That will be printed  
in the Journal.

Your Enrolling Clerk respectfully reports that she has on  
this day presented to the Governor for his approval the  
following bill.

Mr. President, I have a report from the Department of  
Administrative Services from the State Building Division.

April 10, 1981

LB 253A, 466, 243

SENATOR HOAGLAND: I would like to have a vote up on the board here on this bill if I might.

SENATOR CLARK: A record vote has been asked for, machine vote. All those in favor vote aye, all those opposed vote nay. Have you all voted? It takes 25 votes to move the bill. Once more, have you all voted? Record the vote.

CLERK: 25 ayes, 6 nays on the motion to advance the A bill, Mr. President.

SENATOR CLARK: The bill is advanced. LB 466.

CLERK: Mr. President, a series of amendments to the bill. First are E & R amendments.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to 466.

SENATOR CLARK: Move to accept the E & R amendments to 466. All those in favor say aye, opposed. They are adopted. What do you have on the bill?

CLERK: Mr. President, the next motion I have on the bill is to indefinitely postpone. That is offered by Senator Chambers. That will lay the bill over.

SENATOR CLARK: The bill is laid over for one day. We will go to item #6. Are you ready with yours? All right, we will just pass it over today then. We will go to #6, LB 243.

CLERK: Mr. President, LB 243 was a bill introduced by Senator Loran Schmit. (Read.) The bill was first read on January 16. It was referred to the Ag and Environment Committee for hearing. The bill was advanced to General File. There are committee amendments by the Ag and Environment Committee, Mr. President.

SENATOR CLARK: Is Senator Schmit in the room? Senator Wagner, do you want to take the... Here he is, Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, the amendment, committee amendments change the provision of the requirement that eminent domain cannot be used in instances of 50% and more use of the structure to a terminology calling for a 50% benefit performance. That is the only change and I move the adoption of the amendment.

SENATOR CLARK: Senator Chambers, on the committee amendments.



April 23, 1981

LB 163, 562, 466, 559, 560

Senator Warner, are you ready for 163 as amended.

SENATOR WARNER: Yes, Mr. President, I move that the bill be advanced. As indicated, it is merely the reaffirmation of current projects underway.

SPEAKER MARVEL: All those in favor of the adoption of the amendments...all those in favor of advancing the bill vote aye, opposed vote no, 163. Record.

CLERK: 27 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: Motion is carried. The bill is advanced. Now we are ready for 562.

CLERK: Mr. President, LB 562 (read title). The bill was read on April 14 and referred directly to the General File, Mr. President.

SPEAKER MARVEL: Senator Warner.

SENATOR WARNER: Mr. President, I move that LB 562 be advanced. Briefly, the bill contains roughly \$3.7 million for 309, for the continued deferred maintenance of various buildings, a variety of small projects. There is no major construction of any major building contained in the budget bill for reasons I have discussed numerous times before so I move the bill be advanced.

SPEAKER MARVEL: The motion is the advancement of LB 562 to E & R for review. All those in favor vote aye, opposed vote no. Have you all voted? Record.

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

SPEAKER MARVEL: Motion is carried. The bill is advanced.

CLERK: Mr. President, Senator Newell would like to print amendments to LB 560; Senator Labeledz to 466; Senator Haberman to 559.

And Senator Schmit offers notice of hearing for gubernatorial appointments confirmation.

SPEAKER MARVEL: Senator Vard Johnson, would you like to recess us until tomorrow morning at nine o'clock?

SENATOR V. JOHNSON: Mr. Speaker, I move that we recess until

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LB 384, 466

language in the intent language in the statutes and would urge the body's adoption of this amendment.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President, members of the Legislature, I have discussed the amendment with Senator Vickers. The language was perhaps a little flowery in that original draft and I have no objection to it. It is along the line of some of Senator Warner's objections to some of the language that he deleted and so I would ask for the adoption of the amendment.

SPEAKER MARVEL: The motion is the adoption of the Vickers amendment as explained. All those in favor vote aye, opposed vote no. Have you all voted? We are voting on the Vickers amendment to the bill. Record.

CLERK: 26 ayes, 0 nays, Mr. President, on the motion to adopt the Vickers amendment.

SPEAKER MARVEL: The motion is carried. The amendment is adopted.

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

SPEAKER MARVEL: Senator Schmit, do you want to move the bill?

SENATOR SCHMIT: I move the bill be advanced to E & R final, Mr. President.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed no. This is to advance the bill. Record.

CLERK: 25 ayes, 4 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. It is my privilege to introduce two groups, one from Howard Peterson's district, 43 students from the Lincoln School, Grand Island, Nebraska, Mrs. Engelhaupt the teacher, in the North balcony. Will you hold up your hands so we can see where you are. Welcome to the Unicameral. From Senator Hoagland's district, 25 students from Brownell-Talbot, Omaha, Nebraska, Hazel Wait and Loretta Reinig, teachers, and they are in the North balcony. Will you hold up your hands so we can see. Okay. On 466 there is a request. Senator Labedz, why don't you make the request and then we can proceed.

SENATOR LABEDZ: Thank you, Mr. Speaker, I request for unanimous consent to pass over 466 for at least two or three bills

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LB 466, 296

until we get copies made of an Attorney General's opinion to be distributed to all of the members.

SPEAKER MARVEL: Any objection? Okay. The next bill is LB 296.

CLERK: Mr. President, LB 296, there are E & R amendments, Mr. President.

SPEAKER MARVEL: Senator Chambers, do you want to move the E & R amendments to LB 296.

SENATOR CHAMBERS: Mr. Chairman, I move for the adoption of the E & R amendments to LB 296.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. Thank you, sir.

CLERK: Mr. President, I now have amendments from Senator Cullan found on page 1416 of the Journal.

SPEAKER MARVEL: Senator Wesely.

SENATOR WESELY: Mr. Speaker, members of the Legislature, the amendments Senator Cullan had in the Journal are an attempt to try and get the bill in the proper form. There was a white copy passed out on General File and essentially this amendment will bring us into that white copy. The problem was, I guess, some of our sections were not ordered in the proper sequence so this merely, it does not change any of the wording, it just puts the sequence of the sections in order and puts it into a more, I think a legalistic form. So I would suggest that we amend this with this amendment and put it in the proper form and again, it will not change any of the wording or the intent. It is merely a technical change.

SPEAKER MARVEL: The Clerk informs me that the amendments that Senator Wesely is discussing are on page 1416 of the Journal. All in favor of the adoption of the amendments found on page 1416 of the Journal amending sections to LB 296, all in favor of the motion vote aye, opposed vote no. Have you all voted? Okay, record.

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

SPEAKER MARVEL: The motion is carried. The Cullan amendment is adopted.

that this bill has been held up with amendments and kill motions and I think if that if we take it up today we will get it out of the way with very little discussion. Thank you.

SPEAKER MARVEL: Okay, Senator Labedz has closed on the motion to suspend the rules. All in favor of that motion vote aye, opposed vote no. Have you all voted?

SENATOR LABEDZ: . . . important vote, I would like to have a roll call vote and a Call of the House.

SPEAKER MARVEL: Okay, shall the House go under Call. Shall the House go under Call. All those in favor vote aye, opposed vote no. Record.

CLERK: 19 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please return to your seats. All unauthorized personnel please leave the floor and record your presence. There are four absent. While we are waiting for legislators to return, in the north balcony from Senator Maresh's district we welcome eight students from Strang, Nebraska, with four adults, Shirley Brunkow is the teacher. Where are you located? Mr. Sergeant at Arms, we are looking for Senator Newell, Senator Schmit, Senator Vickers and Senator Haberman. Senator Schmit, Senator Newell and Senator Haberman. Senator Labedz, shall we proceed? Everyone is here but Senator Haberman, or accounted for. There are four absent.

SENATOR LABEDZ: We can start it. Perhaps he will be in here before we finish the vote.

SPEAKER MARVEL: Okay, call the roll.

CLERK: Roll call vote. 26 ayes, 12 nays, 6 present and not voting, 4 excused and not voting, and 1 absent and not voting. Vote appears on page 1570 of the Legislative Journal. The bill will be laid over, Mr. President.

April 29, 1981

LB 134, 11, 146, 466, 506

Senator Marsh to print amendments to LB 466; Senator Warner to LB 506; Senator Kremer to LB 146; Senator Schmit to LB 11.

Your committee on Appropriations reports LB 556 to General File with amendments.

SPEAKER MARVEL: Okay, call the roll.

CLERK: (Read roll call vote as found on page 1628 of the Legislative Journal.) 17 ayes, 22 nays, Mr. President.

SPEAKER MARVEL: Okay, Senator Warner has agreed to holding up on appropriation bills until we after we come back that we take up 134 and see if we can finish it rather than having to come back to it again. Senator Landis... unless there is objection to that procedure. Senator Landis, do you want to recess us until one-thirty?

SENATOR LANDIS: Mr. Speaker, I move to recess until one-thirty this afternoon.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. We are recessed until one-thirty.

Edited by:

  
Mary A. Turner

April 30, 1981

LB 466

SPEAKER MARVEL: The motion is carried. The next item is item #6, Select File. The Clerk will read.

CLERK: Mr. President, we last considered LB 466 on Select File on April...well, the E & R amendments were adopted on Select File on April 10. There was a motion to indefinitely postpone offered. That laid the bill over. That motion was subsequently withdrawn. There was an amendment adopted by the body on April 24 offered by Senator Labedz. After that a motion by Senators Fowler and Landis to indefinitely postpone the bill. That is what is pending at this time, Mr. President.

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: Mr. President, I was thinking that we could withdraw this and offer it on Final Reading, but I think maybe we will take it up on Select File. I have filed a motion, Senator Landis and I, to indefinitely postpone LB 466 in its current form with the amendments of the Health Committee. I understand that there are other amendments filed to add things to 466. If this motion fails, those things are added, then perhaps the Health and Welfare Committee will have to have another hearing on the bill. I think perhaps we should just go back to ground one and start over with this legislation. Briefly, I wish to draw to the attention of the Legislature two Attorney General's Opinions with regard to LB 466 and to cite those. We go through a ritual in this Legislature with regards to abortion legislation, and that ritual is that legislation is introduced, Attorney General's Opinions tell us it is unconstitutional in part if not in whole, we go ahead ignore those opinions, pass the bill, have it challenged in court, the court...there is an injunction, the law is not enforced, it really does nothing. We go through the Federal District Court in Lincoln, maybe get to the Eighth Circuit Court in St. Louis. The judges throw out the sections that the Attorney General identified as unconstitutional, and we come back in and we have another abortion bill, and again the Attorney General says that it is unconstitutional. We go ahead and pass it. It goes to the District Court here, goes to St. Louis, gets thrown out, comes back, and at a certain point perhaps after eight, nine years of this ritual I would think this Legislature might get tired of paying the costs of defending unconstitutional legislation. Now there is one twist in the story with regards to 466, and that is that it is unconstitutional according to the Attorney General based on our state Constitution and not based on issues that relate to the constitutionality or appropriateness

at the federal level of having an abortion but gets to a question that comes up time and time again in the Legislature and that is what is known as class legislation and the creation of an improper category and the use of legislative authority or abuse of legislative authority to attack one single procedure without any sort of foundation for singling that out. Now if you were to look on page 1404 of the Legislative Journal, I would like to highlight just a couple of sections of the Attorney General's Opinion. One of the things, and I think it is something that must be understood by this Legislature, is that the Attorney General points out, "An abortion is a legitimate medical procedure to which a woman has a right". There is...by the Supreme Court decision, a woman has a right to choose to have an abortion. It's something that we must accept. It is a right like freedom of speech, freedom of religion. It is a constitutionally protected right. Given that fact, you then look at our state law and it says that "the Legislature may not under the guise of police regulation stifle legitimate business or make constitutional rights subservient to pressure groups seeking enactment of statutes advantageous to their particular point of view. To single out abortion procedures for special treatment from other medical procedures not only would have a chilling effect on constitutional rights but it may be an unconstitutional classification". This is what I am talking about, the class legislation. "To be constitutional under Article III, Section 18, of the Nebraska Constitution, a classification should rest upon some difference in situation or circumstances between the thing or person placed in one class and that placed in another. Invalid class legislation denies rights to one which are accorded to others or inflicts upon one individual a more severe penalty than is imposed upon another in like case". What the proponents of LB 466 have not entered into the record is any sort of compelling reason that abortion procedures should be singled out as it is singled out in 466 from any other medical procedure, some that would be more hazardous than abortion, some that may, in fact, have a greater demand upon the provisions of 466 than abortion. There has been no evidence, no discussion as to why, in fact, this category of medical procedures needs this special legislation, and the reason is that, in fact, there is no justification other than the fact that certain pressure groups want to try and deny women the right to have abortions, and in that way passage of this bill would under the guise of police regulation stifle legitimate business or make constitutional rights subservient to pressure groups. The Attorney General has a second opinion that

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LB 466

says much the same. 466 is unconstitutional not just because of the Roe versus Wade Supreme Court decision. It is unconstitutional because of our own state Constitution that puts a limit on what we can do and says that this Legislature must have a rationale for creating a certain category or class for legislation. For that reason I rise with this motion to indefinitely postpone LB 466. I think perhaps it is time that the circle of passing unconstitutional legislation only to see the courts direct us to follow our Constitutional oath, that perhaps we break that circle and for once not pass an unconstitutional abortion bill simply because certain pressure groups are asking us to enact bad law. With that, I move to indefinitely postpone LB 466.

SPEAKER MARVEL: Senator Labedz, and then Senator Cullan.

SENATOR LABEDZ: Thank you, Mr. Speaker. Thank you. Of course, I will oppose the kill motion and I am sure that we all realize that we just passed LB 284 which the Attorney General says was probably unconstitutional in part, and Senator Fowler did read you parts of the Attorney General's Opinion, but I have the copy here also that he just took parts of and I would like to reiterate some of the things that he said. And on page 1405 they don't say that it's definitely unconstitutional. They say a provision on is probably unconstitutional as qualified below, and at the end of the letter it says, "As discussed above, there may be an unconstitutional classification by singling out abortions from other medical procedures". And I wanted to go on further and explain why I don't think that it is or any part of it is unconstitutional, and I would also like to remind you that we have the severability clause that was already accepted a few days ago. I have several problems with the Attorney General's Opinions No. 71 and 83 regarding LB 466 as amended by myself. The Attorney General's Opinion on April 8th discussed the exemption of the physicians' offices from the Health Clinic Licensure Law. The Opinion states that "the exemption of physicians' offices from licensing under Nebraska Statute is proper only when the result of such action is not harmful to the public interests upon which the validity of the licensing statute was predicated". It follows "that withdrawal of that exemption is proper when the result of it is inimical to the public interests". It is my position and the position of others that the public interest is what this section of LB 466 will protect by removing this exemption. I have noted in earlier debate that evidence was presented in Federal District Court that the physicians at the abortion clinics in Omaha seldom,



if ever, see a woman before she is on the procedure table. One could describe the practices at these facilities as assembly line medicine. The exception for the private office of a physician from state laws regulating medical clinics was never intended to exclude medical facilities where there is little or no doctor-patient relationship as in the case in Omaha's abortion clinics. The selection of ten or more abortions in any one calendar week was done to cover the major abortion clinics in the State of Nebraska and would not affect the physicians scattered around the state who perform abortions in their offices on a very limited basis. The Attorney General's Opinion also states that this particular section of LB 466 is probably unconstitutional because, number one, it creates an unconstitutional classification by singling out abortions from other medical procedures. And, number two, that it is an improper use of the state's police power to stifle legitimate business. My response to these points is that, number one, the Supreme Court in *Planned Parenthood of Central Missouri versus Danforth*, said that regulations dealing with abortion are not unconstitutional merely because the state does not impose similar burdens on other medical procedures. Number two, I fail to see by requiring a facility to be licensed as a health clinic if ten or more abortions are performed in one calendar week, the state would be stifling legitimate business. The regulations and standards governing health clinics are general in nature and provide some very basic guidelines that a clinic if legitimate must follow. These include among others that sanitary conditions be maintained within the clinic and also a provision requiring a clinic review process whereby a clinic establishes a method to monitor its program in the quality of client care. None of these regulations and standards would be as far as I can determine overly burdensome or stifling on any legitimate business. I also fail to see how these regulations or this particular section of LB 466 would present a chilling effect upon a woman's constitutional right to an abortion. Requiring facilities such as the abortion clinic in Omaha to be licensed as health clinics would assure women who walk into the clinic that the facility is required to provide competent medical care and is required to have established a working relationship with other health and social service agencies or practitioners in order to provide a continuity of service and care for the clients. I believe that the evidence presented to Judge Urbom in the previously discussed trial and the expose that was done by the Sun Times in Chicago of the repulsive medical practices of abortion

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clinics indicates that patients who go to clinics need greater protection than those who seek treatment at a bona fide private physician's office. I believe this evidence also indicates that there is a sufficient difference in the situations surrounding the abortion clinics in Nebraska for the state to make legitimate and constitutional classifications for purposes of protecting the public interest, and I believe these are my reasons for objecting and opposing the Attorney General's Opinion and also opposing the kill motion on LB 466.

SPEAKER MARVEL: Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I think Senator Labedz has adequately responded to the concerns about the possible constitutionality or constitutional problems with LB 466 and I need not expound on that. I would like to make one point, is that the Legislature as far as licensure is concerned does make some distinctions as far as what individuals can do. This year we passed LB 379 which was aimed to ensure that only nurses with certain degrees could, and certain qualifications, could perform anesthesiology functions in the State of Nebraska. So I think this is simply an extension of the logical types of classifications that the Legislature has been making over different kinds of medical procedures in the past, and I do think it has a legitimate function to protect the health, physical and mental health, of the individuals involved. The other thing I would like to point out is that the constitutionality of this particular bill is I think reinforced somewhat by the recent six to three decision of the United States Supreme Court as far as the Indiana statutes are concerned. I haven't had a chance to read that opinion yet, but basically it allowed the state to take a step even beyond what Nebraska is proposing here, and that step was that only abortions performed in the first trimester could be performed in a hospital. And so to that extent I think that perhaps Nebraska could go farther constitutionally than what we are doing here already. So I would urge you to reject the kill motion and let's adopt LB 466 hopefully this morning and move on with other business. Thank you.

SPEAKER MARVEL: Is Senator Schmit in the room? Senator Marsh, do you wish to be recognized? Senator Schmit doesn't seem to be here.

SENATOR MARSH: Thank you, Mr. Speaker. I rise to

support the kill motion and I would like to read to you a letter which I wrote to the Attorney General. "Dear Mr. Attorney General: The Legislature recently amended and advanced to Select File LB 466, a bill which is specifically intended to make it more difficult for a particular medical clinic in Omaha to provide abortion services. As I understand the bill, it has two central provisions. Section 1 of the bill as amended expands the definition of unprofessional conduct including the performance of a physician...to include the performance by a physician of an abortion where he or she will not be available for a period of at least 48 hours for postoperative care. As I understand it, no such postoperative care requirement is demanded for any other medical procedure, including all forms of surgery which entail as much or more danger to the physical or life of a patient. I question whether it is constitutional to single out abortions for such special treatment. The original version of the bill deemed it unprofessional to depart the medical community after performing surgery without being available for follow-up care with some of the same provisions. I have much less of a problem with a provision of that sort because no particular medical procedure is set out. I would be most interested in the opinions of your office on this matter. Section 2 apparently purports to exclude from the definition of health clinic found in subsection 4 which provides ten or more abortions per week. My concerns are the same. Is it constitutional to treat facilities differently which conduct ten or more abortions per week from facilities which for instance extract ten or more wisdom teeth per week, conduct ten or more plastic surgery operations per week, or perform ten or more vasectomies per week? Each of these procedures is approximately as life threatening as an abortion. How can it be constitutional to treat abortions differently? I would appreciate greatly your opinion on these questions. I will ask the Legislature to hold further action on the bill until we have received your opinion." Well, we now have received that opinion and it is unconstitutional. The various areas are set out. Mr. Clerk, would you please tell me the page number where this is listed in the Journal? 1404.

CLERK: Senator, are you referring to your request for an Attorney General's opinion?

SENATOR MARSH: Yes, You may read it in its entirety.

CLERK: 1404, Senator.

SENATOR MARSH: It follows that withdrawal of the exemption from a physician's office is only proper

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when the public interest and safety is indicated. This is not true in this bill. To be constitutional a classification should rest upon some difference in situation or circumstances between the thing or a person placed in one class than that placed in another. We have been told that this is because of the health and safety, but in my letter I pointed out that it is the same health and safety regulations and we also have complications from vasectomies performed in a physician's office, wisdom teeth extracted in a physician's office, and other forms of surgery which currently are allowed. There are mechanisms for scrutinizing. There are mechanisms now available to the medical profession. The medical profession does not want to have physicians who use poor procedures or life threatening procedures.

SPEAKER MARVEL: You have thirty seconds.

SENATOR MARSH: This is not the mechanism for our legislation, but I would like to tell you that I have an amendment which would strike the original section of LB 466 and insert, "the performing of an abortion during the second trimester of pregnancy at any place other than a hospital is a Class IV felony". Let's use LB 466 if it is not killed for this, not what it has been introduced to do, another harassment procedure.

SPEAKER MARVEL: The next person we will call on is Senator Higgins. I would like to introduce first of all from Senator Witala's District seven 3rd, 4th and 5th Grades and two adults from Elm Tree School, Valley, Nebraska. Mrs. Cindy Nielsen is the teacher and they are in the north balcony, right up there. Welcome to the Unicameral. Senator Higgins.

SENATOR HIGGINS: Mr. President, I call the question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? Okay, all those in favor of ceasing debate vote aye, opposed vote no. Do you wish to cease debate? Have you all voted?

CLERK: 26 ayes, 3 nays to cease debate, Mr. President.

SPEAKER MARVEL: The motion is carried. Debate has ceased. The Chair recognizes Senator Fowler to close on his motion.

SENATOR FOWLER: With the Chair's permission I would make a couple of comments and then yield the rest of my

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time to the cosponsor of the motion, Senator Landis. Senator Labeledz mentioned the Danforth decision and some other U.S. Supreme Court decisions and, in fact, even sent those same arguments to the Attorney General where again if you look on page 1566, the Attorney General rejected those because it says, "our conclusion in Attorney General Opinion No. 71 that both the proposed amendments on LB 466 were probably unconstitutional, was based primarily on state law, that is, improper use of the police power to stifle legitimate business and improper classification not reasonably related to the purposes of the underlying legislation being amended". Senator Marsh laid out equally risky health procedures, perhaps some that are more risky, that this Legislature has never bothered to review the quality of care, does not care about. There seems to be only one medical procedure with this level of risk that suddenly becomes a subject of legislation, and that is abortion, and the reason it is abortion is because of the political pressure groups, because of the procedure itself and not the risk, and not the concern for health. Senator Cullan is wrong in saying that the recent Supreme Court decision with regard to requiring abortions after the first trimester be conducted in hospitals lays groundwork for this bill. The Supreme Court has always made distinctions between first trimester abortions, second trimester abortions and third trimester abortions, the first three months, the second three months and the third three months. It is always said that at the point of the second three months the state can require greater procedures because there is a greater risk at that point, but in the first three months the risk involved in the operation is low, and for that reason the amount of state regulation is severely limited. So that does not in any way clear the way for LB 466. The sponsors of this bill have not and cannot provide any legitimate justification for this procedure having a more stringent requirement than equally risky medical procedures other than the fact that they do not agree with the Supreme Court decision of Roe versus Wade that allowed abortions, but there is no health argument, no legitimate health argument that's been presented for this. For that reason, this is an improper classification and unconstitutional. I yield the rest of my time to Senator Landis.

SPEAKER MARVEL: Senator Landis.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, there is an old word that describes this body

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to a "T" on this issue. Scofflaw is the word. A scofflaw is a person who ignores repeatedly the constraints of the law. It is this concept that we have where...that we base our habitual criminal statutes on that through repeated failures one has a greater sense of wrong because they know that they are doing wrong when they repeat the offense a second, third and fourth time. A scofflaw is a person who has not one or a handful but dozens and dozens of tickets or violations, repeated offenses. This body has repeatedly defended the U.S. Constitution and has been told so. It has been struck down repeatedly by the federal courts. It has repeatedly ignored the advice of the Attorney Generals of the State of Nebraska, this one and the former as well, and they have been repaid for that by the costs incurred in federal and state court in defending undefendable laws. They have racked up quite a considerable skein of losses, not a very minor one, as well as considerable legal fees and the time and expense of putting our State Attorney General's office to the responsibility of defending laws that are struck down. This body to the State of Nebraska has proven to be a scofflaw in that they choose to ignore the law, the change and the policy that offends you if it's constitutional, that is to change the Constitution. We are going to have to change Article III apparently with respect to special classifications. We are also going to have to change the federal Constitution to do what apparently we want to have accomplished in LB 466. But rather than facing that responsibility, that agenda of change, we have adopted a different agenda and that is a continual legislative agenda of harassment and intimidation of women who wish to exercise constitutional rights.

SPEAKER MARVEL: Thirty seconds.

SENATOR LANDIS: We are as a body over a period of time with this kind of course of conduct evincing to the State of Nebraska that we are no better than the scofflaws of the past that have been condemned by the courts and have had repeated offenses and had those offenses paid with more severity, and I hope that in the next couple of months this body will find it necessary to respect the conviction of the people and that that body will recognize and that this is an offense that they will recognize and will chastise us for at a later time.

SPEAKER MARVEL: The motion is the indefinite postponement of 466. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Senator Fowler.

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SENATOR FOWLER: I would just ask that it be a record vote.

SPEAKER MARVEL: Proceed, Mr. Clerk.

CLERK: (Read the record vote as found on page 1662 of the Legislative Journal.) 12 ayes, 28 nays, Mr. President, on the motion to indefinitely postpone.

SPEAKER MARVEL: The motion fails.

CLERK: Mr. President, the next motion I have is from Senator Labedz and that amendment is on page 1546 of the Journal.

SPEAKER MARVEL: Okay, Senator Labedz.

SENATOR LABEDZ: Mr. Speaker, this is the notification amendment and I will be very...I will try to be very brief because I believe I sent out the information explaining why I think this notification amendment is probably one of the most important amendments or legislation that we have done so far on the movement. And I offer this amendment to LB 466 in response to the recent Supreme Court decision which addressed the question of parental notification in situations where an abortion is to be performed on a minor. The U. S. Supreme Court has recently ruled that a Utah parental notification requirement is constitutional as applied to immature dependent, to dependent minors. According to the Supreme Court the Utah statute did not give parents a veto power over a minor's abortion decision. The Utah statutes as applied to immature and dependent minors served important consideration of family integrity and protecting adolescents as well as providing an opportunity for parents to supply essential medical and other information to the physician, and this to me is an integral and a very important part of LB 466 because it continues on with my concern of follow-up care. The amendment before you would add a new section to the Nebraska law with detailed situation where a physician would be guilty of an unprofessional conduct. If adopted, this amendment would require a doctor to notify one of the parents or legal guardian of a minor who wants to have an abortion. The notification procedure is described in subsection 3 (1) of the amendment. In subsection 2 of the amendment, if a minor contends that she is immature or mature enough to make the abortion decision without parental notification, or that notification would not be in her best interest, she must present an affidavit

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or testimony that would substantiate such a claim to a state district court or judge or if a state district court judge is not available in the county where the minor resides or the abortion is to be performed, to a county court or judge. All of the notification requirements would be waived if a court or judge finds that a minor is mature enough to make the decision independently or that notification would not be in her best interest. This particular subsection is included in the amendment to allow any minor who wishes to make a claim of maturity or independence the opportunity to present evidence to a court to prove the validity of such a claim. I feel that a judge would be the most appropriate individual to make such a determination. A physician simply should not be required to make a determination of a minor's maturity or a family situation. Subsection 2 also provides the court shall expedite all proceedings filed by a minor and render a decision within twenty-four hours of the initial proceeding. In subsection 3 of the amendment, all of the notification requirements would be waived if an emergency situation exists and is certified as an emergency by the attending physician. I believe adoption of this amendment is crucial in ensuring that responsible medical care is provided to minors who undergo abortions. I urge the adoption of the amendment.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Mr. Clerk, you have an amendment to the amendment.

CLERK: Mr. President, Senator Vard Johnson moves to amend the Labeledz amendment. (Read the V. Johnson amendment as found on page 1663 of the Legislative Journal.)

SENATOR NICHOL: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, my particular amendment is a very easy amendment to understand. Senator Labeledz would require every minor who presents herself to a physician for an abortion, would require that physician to notify that minor's parent or parents or guardian that the minor is requesting the abortion service. My amendment says that that requirement shall only apply to minors who are less than 16 years of age. Now I do hope this body will hear me out. I recognize that in this area constitutional arguments fall on what so far have been deaf ears, but I



expect those ears to become unstopped and this body to realize that we cannot continue to advance unconstitutional legislation, and the purpose of my amendment is to take that which is highly suspect and to render it into something which will pass muster in the courts. Now I do have some credentials in this area. Two years ago when this body was considering LB 316, its abortion bill, I worked very diligently and very hard to ensure that the bill would be a constitutional one, and time and time again my efforts were overridden by the body except in one particular. Senator Pat Venditte wanted to change the definition of viability, and I said, Senator Venditte, what you are doing is clearly unconstitutional, please use this definition. And reluctantly and under the persuasion of Senator Labedz and Senator DeCamp, we got my viability definition adopted. Court after court has passed on LB 316 and found it unconstitutional except the definition of viability, and that is the section that is being used right now to prosecute Dr. Labenz in Omaha, Nebraska. So, you know, there are a few times and maybe it's worth this body's while to have an attorney member who will take the time to read the case law and to try to take a bill and make it a constitutional bill. I have the Supreme Court's decision here of H.L. versus Matheson. This case involved a 15 year old girl and that was it. And the United States Supreme Court two weeks ago said, look, we are going to have to look at the Utah statute as applied to that 15 year old girl. It said, we need not reach the question that...I'm sorry, it said, she, the plaintiff, contends it is overbroad and that it can be construed to apply to all unmarried minor girls including those who are mature and emancipated. We need not reach that question since she did not allege or proffer any evidence that either she or any member of her class is mature or emancipated. The court says, we cannot assume that the statute when challenged in a proper case will not be construed also to exempt demonstrably mature minors, and finally, the only issue before us then is the facial constitutionality of a statute requiring a physician to give notice to parents, if possible, prior to performing an abortion on their minor daughter when the girl is living with and dependent upon her parents, when she is not emancipated by marriage or otherwise, and when she has made no claim or showing as to her maturity and as to her relations with her parents. I have selected the age of 16 as being the time when you that physician has to notify the parents of proposed abortion because that is the age that you and I have said marks the time when a girl is to be protected in statutory

rape cases. We have said that if a young woman is below the age of 16 and if a man above the age of 19 has intercourse with her, then that man is guilty of statutory rape, and we have said that because we have concluded that 15 year olds, 14 year olds, 13 year olds, and 12 year olds and right on down, do not have the maturity, do not have the ability to judge the quality of their act and therefore when they are abused by an older male, then that man should be convicted of statutory rape. And it would seem to me that the age of 15 is an appropriate demarcation point for assuring... for assuring that that young person who has presented herself to a doctor must have...must have informed his or her...I am sorry, informed her parents of proposed abortion, and that is what my amendment would do. It just says very simply it applies to minors less than the age of 16. I want to talk one more time about the effect of unconstitutional legislation. Unconstitutional legislation costs this state bundles of money. This state right now has a judgment against it for \$70,000 for the attorneys' fees and court costs in conjunction with a challenge to LB 316. That's \$70,000 that we have to pay for having proposed, having moved through this body, having had the Governor sign and having had the Attorney General pass on, an unconstitutional piece of legislation. How much longer, how many more dollars do we want to continue to cost the State of Nebraska in advancing an unconstitutional bill? I happen to agree incidentally with a parental consultation requirement because I do believe very firmly in a family with a minor in it coming to grips with a decision about an abortion, and I intend to support a constitutional parental consultation amendment or statute. I did that in LB 316. I made somewhat similar arguments, as Senator Labeledz will recall, on LB 316 about the age...about the age, because I said you have got to be able to sift out the mature minor from the immature minor, and if you can't do that, you have an unconstitutional bill, and sure enough, the parental consultation section we have got on LB 316 is unconstitutional. Now I think...now I think very simply that this amendment will at least allow the Senator Labeledz amendment to be a constitutional amendment with respect to the parental consultation requirement.

SENATOR NICHOL: One minute.

SENATOR V. JOHNSON: I want to make one more comment. As you know, I am a legal aid lawyer and I have been such for many years, but a number of years ago I saw a 16 year old girl who was in her ninth month of pregnancy

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and she wanted me to collect child support, and I said I would be glad to do it, but I talked to her at some length about adoption. She said to me after my ten, fifteen to twenty minute discussion, Mr. Johnson, you don't understand, this is my third child. My first child was at age 14 conceived by my stepfather. My second child was at age 15 conceived by a friend. I had both of those children placed for adoption. I want to keep this child. I said to myself, that 16 year old has been through so much experience that she really did know the quality of her act. I might argue with her decision but she knew the quality of that act. It is my opinion very simply that when dealing with 16 year olds, 17 year olds, 18 year olds, and up, in the main these are young people who have had enough life experience to be able to make decisions for themselves. And you and I have already set the standard in the statutory rape criteria.

SENATOR NICHOL: Senator Schmit is next. However, I need to know how many of you that had your lights on wish to speak to the amendment to the amendment. Senator Dworak, Senator Labedz, Senator Marsh...nearly all, I guess. Okay, Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I have very rarely spoken on the issue of abortion on this floor because I know that all of you know how I feel about the issue. I am going to speak now just very briefly relative to Senator Johnson's plea that we listen to the arguments versus about the un-constitutionality. I am not much of a person to remember dates and that sort of thing, but if you will look back in your history books you will remember that in December of 1856 the Supreme Court said that a black man was property and not a person, and it wasn't until about ten years later that the 13th amendment to the Constitution was ratified which abolished slavery. And it's been over a hundred years ago and none of us on this floor are so naive as to believe that all prejudice has been wiped out, but it did take some effort, some sincere effort, to get rid of that kind of a proposal. Remember also that for many, many years the Supreme Court said that separate but equal facilities for nonwhite persons were constitutional. It wasn't until the Civil Rights Act of '64 and '65 that it became the law of the land that separate but equal facilities were not constitutional and it took the united efforts of a great many people to change that constitutional decision. Look back to World War II and most of you can remember when millions of people were wiped out because one particular group of

people decided that the Jewish people didn't deserve to live, and there were at that time many people in the world who had to be aware of what was happening but who did not take a position vocally vigorously opposing what was happening in Nazi Germany. I am not challenging the good intentions of any of the persons who oppose my point of view, but what I am saying is that those of us who have a feeling as we do about the abortion issue have a responsibility to speak to it. We do not necessarily want to avoid the constitutional question but we want to express our opposition, express our firm intention that we think it is wrong so that 25, or 50 or 100 years from now if medical technology or some other science is able to tell us exactly when is a fetus viable, those of us who have felt as we did can say that we did not sit by silently and do nothing. It's just that simple. I would hope that....

SENATOR NICHOL: One minute.

SENATOR SCHMIT: ....we would be at least allowed to express our deep concern for those who cannot speak for themselves. Therefore, I oppose Senator Johnson's amendment to the amendment.

SENATOR NICHOL: Senator Dworak. Senator Marsh, you are next. Senator Chambers, Senator Koch, Senator Cullan, Senator Labedz and Senator DeCamp.

SENATOR DWORAK: Mr. President and colleagues, I oppose Senator Johnson's amendment to lower the age to 16. I think this frankly is an arbitrary decision. I think some 17 and some 18 year old people are mature enough to make decisions but I think some are not. We are faced with this dilemma in almost any category we talk about. We talk about the age for drinking as suddenly the magic age 20, or 21, or 22, or ever. We talk about it in the age of marriage where I think we are at 17. And we talk about it in the age of driving, when are we mature enough to drive, as 16. So I think it is an arbitrary situation and I think in my opinion...now I have always supported parental consultation, parental advisement in a serious situation like this. I think that 16, 17, 18 year old person needs the support, parental support. Now some circumstances preclude that. Some broken families for one reason or another preclude that parental support. In those cases, Senator Labedz, through other sections makes provisions where those people can obtain abortion without the parental support. Senator Labedz's amendment says and defines minor as defined in Section 38-181 of

the Nebraska statutes. I think there is precedent for Senator Labedz's amendment stating the age at where she stated it and I think it becomes almost an arbitrary decision. I think you could probably, depending on your philosophy, lean one way or the other, and my particular philosophy is that I want to involve and provide for parental support to a person in this situation under these circumstances wherever and however possible.

SENATOR NICHOL: The Speaker has stated that we will adjourn or recess rather at 12:40 and then we will leave this situation and come back after lunch and go to Appropriation bills. We still have six speakers and Senator Chambers, you are next.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, after listening to Senator Schmit indicate that the Legislature should go ahead and pass the bill even if it is contrary to what the Supreme Court has ruled, makes me feel he would be more dangerous at Ord than I am, so he ought to keep that in mind. Now, Senator Labedz, during the Vietnam demonstrations in this country there were also Monks who disagreed with Madam Neu (phonetic) and her husband's administration so they would pour gasoline on themselves and set themselves afire, and they thought this would appeal to Madam Neu, but she said, no, that makes me no difference, as a matter of fact, I will give them the gasoline and matches. So, since the Legislature's intent on showing this defiance, I am going to vote against Senator Johnson's motion. I feel that when the Supreme Court gives a decision on an issue like abortion, the words that it uses to render its decision have more meaning a lot of times than words in routine run of the mill cases. You could almost say that some of the words in their decision are words of art on which will hang the outcome of similar cases before the court. And your amendment does not track the language of the Supreme Court's decision which I am glad for. Senator Johnson makes a blunder as I and others have made tactical blunders on this abortion question by trying to offer amendments to make the bills constitutional. I am through with that. Every unconstitutional provision that is offered, I am going to vote for, because that is my way of voting to knock out the bill, and it also will put me in a position to argue against conservatives like Senator Lamb and Hefner who are worried about how much money the state is wasting. I am going to help them vote for unconstitutional provisions and also for the reason that it will irritate Senator Higgins as I happened to see her come within view. She has a feeling about lawyers making all this money.

Senator Higgins, we are going to let lawyers make more money from the state by enacting unconstitutional provisions, and I think that the Legislature has made it clear that it is not going to use rationality on these bills, so let the word "minor" stand undefined, unmodified as it does in Senator Labeledz's amendment. They are prepared to get in an airplane with enough gas to fly thirty miles, get twenty-nine miles over the ocean and then decide they are going to come back with enough gas to fly one mile. Well, that's the path they wanted to pursue, so I am going to help them by voting against Senator Johnson's amendment. I will not vote for the bill. I am kind of puzzled also by what seems to my mind to be a contradiction but I see things differently than most people around here. Those who say that from the instant of conception we have a human being, therefore there should be no abortions, are the same ones who vote to let cops have high speed chases and kill kids even though they know that's what is happening, and it doesn't bother them. And we don't have to argue whether these are human beings or not. So we can have a compromise, keep the high speed chases, then the minors who want abortions can get the cops to chase them and run into their car and perform a high speed abortion for them, and everybody is happy. Now we have gone into the Orwellian world where words don't mean what they ordinarily mean. This Legislature is dealing in insanity, irrationality. I feel almost like Lewis Carroll's In The Looking Glass story as a participant from the standpoint of looking down the hole or through the looking glass watching. That's the extent of my participation. I am not going to be crazy because everybody else is. Senator Higgins, there was a guy who went to this insane asylum and he asked the people, he was a preacher...he said, my topic will be, why are we all here? And somebody said, because we are not all there. That fits the Legislature. And with that, I will reiterate, Senator Johnson, I am going to vote against your amendment. I am going to vote against any attempt to bring rationality into this irrational discussion. I don't applaud you for this. I condemn you for it until you ought to be ashamed of yourself. You know the theory of diminished mental responsibility. You don't place more on people than what they have the mental capability to cope with. So what you ought to do is just withdraw your amendment and sit down and be quiet.

SENATOR NICHOL: Senator Marsh.

SENATOR MARSH: Thank you, Mr. Speaker. I, too, am going to oppose Senator Vard Johnson's proposal. I know that

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this is an unconstitutional provision the way it is, and when this new Senator Labeledz amendment is added it will be even more unconstitutional, so rather than try to make it a constitutional provision, I, too, will vote against Senator Vard Johnson's amendment. I am surprised that Senator Labeledz doesn't want to have her piece of legislation be constitutional. I really expected her to accept this one without argument, but since that is not the case apparently, I will oppose Senator Johnson's amendment. Why try to make this a constitutional provision? It will cost the state anyway with other unconstitutional sections. We might just as well have them be arguing against all three sections instead of just two.

SENATOR NICHOL: Senator Koch.

SENATOR KOCH: Mr. Chairman and members of the body, it seems as though ever since I have been in this Chamber we have discussed this emotional issue and it seems that every time we do it we run flat into the face of the Constitution. Senator Schmit talked about the World War II issue which was genocide. That's considerably different than what we are talking about here today. We are really talking about constitutional law, and we all took an oath to uphold the law on our best knowledge as it relates to constitutional issues, and the cases are sufficient that we as a body should do everything we can regardless of our philosophy on this issue to make certain that the law is constitutional. But I wouldn't agree with Senator Chamber nor Senator Marsh that I will support the amendment because I want to make it more unconstitutional. That's not the proper way to deal with an issue. The proper way to deal with the issue is to reason together and make certain we try to meet the constitutional intent, at least what the courts have told us. The issue is one of integrity on our part and not to be frightened of the emotions of groups or individuals as they relate to some emotional issue. When I came to this body, I took the oath. The oath was to never go against the Constitution unknowingly and if you take enough time to read the Attorney General Opinions which we frequently have before, the issues of the Supreme Court which we have before us, the United States level, then why should we today not try, if we are serious about 466 and the subject matter, not try then to correct the deficiencies as they relate to constitutional issues? If we do not try to correct these, then we are negligent, absolutely negligent. And I know the pressures are on legislators when you run for the Legislature. The one-issue

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groups, the emotional groups, the psychologies. If you get beat because you have been honest and a man and an individual of integrity, they say you get beat. But most of all you should never knowingly flaunt the law, and I submit to you that we should adopt Senator Johnson's amendment. That's the appropriate way to go, not to try to muddy up 466 and hope one more time the court is going to say, you did not meet the test. And I don't care about the dollars it costs us. That's not the issue. The issue is young people's lives, both the female and the viable human being. That's what we are dealing with. That's what we should address. I will support Senator Johnson's amendment.

SENATOR NICHOL: Senator Cullan. Is Senator Cullan in the sanctuary? Senator Cullan, did you wish to speak? The question is called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay.

CLERK: Senator Nichol voting aye.

SENATOR NICHOL: Record.

CLERK: 27 ayes, 2 nays to cease debate, Mr. President.

SENATOR NICHOL: Debate has ceased. Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, Senator Labedz did want to make some remarks on this and I said I would be more than happy to yield a little time to her.

SENATOR NICHOL: Senator Labedz.

SENATOR LABEDZ: Senator Johnson, Lamb and I also wanted to thank Senator Marsh and Senator Chambers for opposing Senator Johnson's amendment, as I shall do also. The age of majority according to the Nebraska statutes as Section 38-101 states "So, age majority and minority marriage affect all persons under 19 years of age, are declared to be minors, but in case any person marries under the age of 19 years, his minority ends." And then we also have and I would like to read you excerpts from, where Stevens quotes from his opinion in Danforth, "The state's interest in the welfare of its young citizens justifies a variety of protective measures because he or he may not foresee the consequences of his decision, a minor may not lawfully work or travel where he pleases, or even attend exhibitions or constitutionally protected



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adult motion pictures. Persons below a certain age may not marry without parental consent. Indeed, such consent is essential even when the young woman is already pregnant. The state's interest in protecting a young person from harm justifies the imposition of restraints on his or her freedom even though comparable restraints on adults would be constitutionally impermissible. The abortion decision is, of course, more important than the decision to attend or to avoid an adult motion picture or the decision to work long hours in a factory. It is not necessarily any more important than the decision to run away from home or the decision to marry. But even if it is the most important kind of decision a young person may ever make, that assumption merely enhances the quality of the state's interest in maximizing the probability that the decision be made correctly and with full understanding of the consequences of either alternative. We also have the definition of "force" and that is in Section 28-1413 but I won't read that, but it is covered and we are using the age of majority in our hospital procedures now. When you do have any medical procedure under the age of 19, they do get the consent or the permission of the parent, and it's not necessary that the parents sign any medical procedure but for the protection of the doctors and the hospitals I understand they do require a signature for a minor, and I thank you very much and I urge you to reject the amendment and keep the age at the age of majority as listed in our statutes.

SENATOR NICHOL: Senator Vard Johnson.

SENATOR VARD JOHNSON: Yes, I yielded some of my time to Senator Labeledz. I didn't realize she would take quite so much but, you know, that's the way it goes sometimes. She says she thought I said all of it. Now Senator Marsh is asking for 15 seconds because she is recanting, and I said, that's fine.

SENATOR NICHOL: There's a minute left and then you will have 45 seconds after she is through.

SENATOR MARSH: You're right, Senator Koch, I vowed to take an oath to uphold the Constitution so I shall support Senator Vard Johnson's amendment. It would make that part constitutional.

SENATOR NICHOL: Thank you. Now Senator Vard Johnson.

SENATOR V. JOHNSON: I think I have 30 seconds left. I personally think...I personally believe that a parental

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consultation provision is a good....I worked on it on LB 316. LB 316 incidentally set the age at 18, not 19, but the age 18. I selected age 16 because this body has already recognized that as a bright line...as a bright line to use in the protection of young women in terms of illicit intercourse. Even though the young woman may know what she is doing, we have said, we don't think that a person of that age should be involved in those acts, and that's why I have set the age of 16 in my amendment. I believe that my amendment will take what Senator Labeledz is doing with which I happen to agree and make it a constitutional provision. I ask that the amendment be adopted.

SENATOR NICHOL: The question is the adoption of Senator Vard Johnson's amendment to the Labeledz amendment. All those in favor vote aye, opposed nay. It takes 25 on Select File.

CLERK: Senator Nichol voting aye.

SENATOR NICHOL: Senator Johnson, six are excused. Record, Mr. Clerk.

CLERK: 13 ayes, 22 nays, Mr. President, on the motion to adopt.

SENATOR NICHOL: The amendment to the amendment fails. Now we still have an amendment to the amendment and another amendment or perhaps two, so the Speaker has asked that, Senator Bill Burrows would you like to recess until 2:00 o'clock, and then when we return at 2:00 o'clock we will take up Appropriation bills.

SENATOR BURROWS: Mr. Speaker, I move that we recess until 2:00 p.m.

SENATOR NICHOL: All those in favor signify by saying aye. Opposed nay. We are recessed.

Edited by:

Marilyn Zank  
Marilyn Zank

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vote no. 361E. Record the vote.

CLERK: (Record vote read. See page 2044, Legislative Journal.)  
41 ayes, 0 nays...42 ayes, 0 nays, 3 excused and not voting,  
4 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The Clerk will now read on Final Reading LB 366E.

CLERK: (Read LB 366E on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass with the emergency clause attached? 366E. Those in favor vote aye, opposed vote no. Have you all voted? Record.

CLERK: (Record vote read. See page 2045, Legislative Journal.) 35 ayes, 8 nays, 3 excused and not voting,  
3 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. Next is LB 369.

CLERK: (Read LB 369 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 369 on Final Reading. Have you all voted? Record the vote.

CLERK: (Record vote read. See page 2046, Legislative Journal.) 44 ayes, 0 nays, 3 excused and not voting, 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. We shall proceed to the next item which is Select File.

CLERK: Mr. President, if I may, I have explanations of vote offered by Senators Stoney and Marsh.

SPEAKER MARVEL: Okay, LB 466.

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CLERK: Mr. President, LB 466 has been considered by the membership. The E & R amendments were adopted on April 10 of this year. There was a motion offered by Senator Labedz. It was adopted on April 24, Mr. President. I now have pending from Senator Labedz amendments on page 1546 of the Journal.

SPEAKER MARVEL: Okay, the Chair recognizes Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. Speaker, members of the Legislature. I believe the Clerk has mentioned the fact that the last time, which was quite awhile ago, we were on the notification amendment and at that time there was several amendments put on the amendment that failed and I would like to explain the amendment now so that you will fully understand what we are voting on. I offer this amendment to LB 466 in response to a recent Supreme Court decision which addressed the question of parental notification in a situation when an abortion is performed on a minor. The U. S. Supreme Court just recently ruled that a Utah parental notification requirement is constitutional as applied to immature dependent minors. According to the Supreme Court, the Utah statute did not give parents a veto power over a minor's abortion decision. The Utah statute as applied to immature and dependent minors served important consideration to family integrity in protecting adolescents as well as providing an opportunity for parents to supply essential medical and other information to the physician. The amendment would add a new section to the Nebraska law which detailed situation where a physician would be guilty of unprofessional conduct. If adopted, this amendment would require a doctor to notify one of the parents or legal guardian of a minor who wants to have an abortion. The notification procedure is described in subsection (1) of the amendment. In subsection (2) of the amendment, if a minor contends that she is independent or mature enough to make the abortion decision without parental notification or that notification would not be in her best interest, she must present an affidavit or testimony that would substantiate such a claim to a state district court or judge, or if a state district court judge is not available in the county where the minor resides or the abortion is to be performed, to a county court or judge. All of the notification requirements would be waived if a court or judge finds that a minor is mature enough to make the decision independently or that the notification would not be in the best interest. This particular section is included in the amendment to allow any minor who wishes to make a claim of maturity or independence the opportunity to present evidence to a court to provide the validity of such a claim. I feel that a judge would be the

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most appropriate individual rather than the doctor to make such a determination. A physician should simply not be required to make such a determination of a minor's maturity. Section 2 also provides the court shall expedite all proceedings filed by a minor and render a decision within twenty-four hours of the initial proceedings. I believe the adoption of this amendment is crucial and I urge the members of the body to adopt the amendment so that we can further advance LB 466. I would want to also mention to you, and I am sure you realize that this bill has had two or three motions to kill. It has also had amendments and I am hoping because of the time, and it has been mentioned here many times today, especially, there are only nine days left and it is vitally important to us that this amendment be attached to LB 466 and I urge the members of the body to advance or to approve this amendment and then advance LB 466 to Final Reading. Thank you.

SPEAKER MARVEL: Senator Cullan. Senator Marsh, do you have an amendment to the Labeledz amendment?

SENATOR MARSH: Yes, sir, I do.

SPEAKER MARVEL: The Chair recognizes you.

CLERK: Mr. President, Senator Marsh would move to amend the Labeledz amendment: (Read Marsh amendment found on page 2047 Legislative Journal.)

SENATOR MARSH: Mr. Speaker and members of the Legislature, Senator Vard Johnson originally offered a motion which said under age sixteen which would have meant a minor up through age fifteen. My motion will take the minor up through age sixteen. When a woman is seventeen and has become pregnant, if she does not desire to tell her family, she is in a more mature situation than if she is sixteen or under. The ideal is if the family is brought in from the beginning but the ideal is not to get pregnant in the first place. But the reality is that many minors are becoming pregnant. The Supreme Court has ruled that the state has the right to make restrictions but they have to be reasonable restrictions. A reasonable restriction would say if someone is over seventeen, they could make that decision. I would urge the adoption of this amendment. I am not sure the bill itself is constitutional. You have seen a copy of the Attorney General's opinion giving many instances throughout the bill as it currently is as to its unconstitutionality but this would assist in making Senator Labeledz' amendment constitutional because there is a difference between a thirteen year old and a seventeen year old. I urge the adoption of this amendment to the amendment.

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SPEAKER MARVEL: Are there others who wish to speak to the Labeledz amendment? To the Marsh amendment to the Labeledz amendment? Senator Cullan, do you wish to speak to the Labeledz amendment or the Marsh amendment to the Labeledz amendment?

SENATOR CULLAN: Yes, I do, Mr. President. Members of the Legislature, I would like to object to the Marsh amendment to the bill. I think it is unwise of us to change the age of majority in this particular case. I think there should be a very compelling reason for us to change the majority, to deviate from the age of majority which is used in all other or most other instances as far as the State of Nebraska is concerned. In my opinion, Senator Marsh has not given us adequate and compelling reasons for us to differentiate between individuals who are the age of majority and those who are sixteen. I believe it is sixteen in her current amendment, and without some adequate justification to make that distinction, I see no reason for us to differentiate. For one thing we are talking about levels of maturity and I think that someone who is seventeen years of age has just as many critical maturity problems as someone who is sixteen and in many cases as someone who is fifteen, and what we are really doing when we establish the age of majority is making a presumption about the maturity level of individuals. Now obviously some individuals are more mature than others at different ages but our presumption should be logical presumptions, and the presumption that someone who is seventeen to make these decisions unassisted is simply not logical, and I think that unless Senator Marsh can show us a compelling reason to differentiate from current state law in other areas, then we should not adopt Senator Marsh's proposal. I would urge you to reject it.

SPEAKER MARVEL: Senator Dworak, do you wish to speak to the Marsh amendment to the Labeledz amendment?

SENATOR DWORAK: Mr. President, I call the question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? The question has been called for. Do I see five hands? Okay. All those in favor of ceasing debate vote aye, opposed vote no. Have you all voted? Have you all voted? We have got a lot of work to do this afternoon before we get through. Have you all voted? Clerk, record the vote.

CLERK: 11 ayes, 9 nays to cease debate, Mr. President.

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SPEAKER MARVEL: Motion lost. Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I rise in support of Senator Marsh's amendment. I happen to agree with the basic concept of a parental notification provision. I agree because I think that it is important that families be together when a young woman faces a decision with respect to an abortion but I have been in my own mind attempting to work out an appropriate bright line, so to speak, to distinguish the mature minor from the immature minor. Now when I first approached the issue, I said maybe, I said to myself that maybe what I should do is to allow the physician to make the decision with respect to the maturity of a minor but I realize that that would probably put a physician in a difficult place because a physician might misjudge and perform an abortion and then be subjected to an unprofessional conduct charge if not some criminal sanction. So it seemed to me that the better way of trying to distinguish maturity was on the basis of an age. As you well know at this time one does not become of age in this state until one is nineteen years old. Now I have a seventeen year old son who will be entering college just at the beginning of his eighteenth year. I happen to know my son and I know how my son will be doing. As far as I am concerned my son is mature enough to make important decisions about his own health and his own well-being. I don't have a daughter at the same age level so I can't comment about whether my daughter would be sufficiently mature to make that decision on abortion on her own right but I can state as a lawmaker, which is what I am and which is what we all are, that it seems to me that when we get into the kinds of years that Senator Marsh is talking about, that by and large, our young people are sufficiently mature and sufficiently independent to be able to make, if they need to, these kinds of decisions about their health and their body and their well-being, and that we ought not tell these young people that they can't make the decision unless they go to court and get the court to affirm their maturity. Now let me comment just a minute as to what it means for a young person, say a seventeen year old, to have to go to court to get a court to say that that person is mature enough to make a decision with respect to an abortion. That young person has got to find an attorney. The attorney has got to prepare a petition. Under our existing law, under our existing law, a minor cannot file a lawsuit in court in his or her own right. That lawsuit must be filed by somebody of age as next friend for the minor. So that means that this seventeen or eighteen year old person has got to find an adult, that is somebody who is of age, who

will file this case as next friend for the minor. Secondly, under our own law, we don't have, under Nebraska procedural rules, we don't have what I am going to call a "Jane Doe" practice and a Jane Doe practice is a way of actually designating yourself in the petition anonymously so that no member of the public can read who it was who is filing the petition. It has got to be filed by Vard Johnson for himself so my name is a public name. Now I happen to know that because I have had a couple of occasions to attempt to bring cases into district court in Douglas County on behalf of minors who wanted their identity not to be known to the public and I had to work and sweat and work to find out some possible way of getting the job done and it was seriously questioned by the judge when it was done though it was done. But we have not changed the law to allow anonymous filings in court. Secondly, virtually all court processes that we engage in in the district court are adversarial processes, and by that I mean simply when you file a petition in court, you are suing somebody and so you have to notify the other side and some five or six weeks later the other side has to file an answer to the case. Now under the Labedz amendment, the amendment says you file a petition and the judge must respond to the petition in twenty-four hours. Well, who is the defendant to the petition? Who is to come before the court to argue the other point of view that this particular individual is immature? The law is silent on that, the amendment is silent on that point. The court process that is set up to in a sense sift out the mature minor from the immature minor is extremely sketchy. At this juncture, I don't think it is particularly workable. It doesn't protect confidentiality and, frankly, it is just a real problem. So it seems to me that we are much better off if we set a bright line, if we in this body say simply that persons who are not yet adults in terms of having come of age legally but yet reflect maturity, if we set a certain age standard as our own judgment regarding maturity, and I think what Senator Marsh has done in saying that a person who is above the age of sixteen, if you are seventeen or you are eighteen, you are still a minor, but if you are seventeen or you are eighteen you are mature enough to make the decision.

SPEAKER MARVEL: Your time is up.

SENATOR V. JOHNSON: You don't have to go to court to get the court clearance on the decision. To me that is an appropriate method to go and for that reason I do support Senator Marsh's amendment.

SPEAKER MARVEL: Senator Pirsch. Okay, the question has been called for. Do I see five hands? Okay, those in favor of



ceasing debate vote aye, opposed vote no. Record.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate is ceased. The Chair recognizes Senator Marsh to close on her amendment.

SENATOR MARSH: Senator Marvel and members of the Legislature, I would like to specifically respond to Senator Cullan's comments about the need to know why I feel a seventeen year old should be able to make that decision. Under Senator Labeledz' proposal, a woman of seventeen who is legally married in our state could make that decision. A young woman of seventeen can be legally married in this state. It seems to me that the same young woman who is not married at the same age should have the same right. You are understanding the young married woman of seventeen does not have to tell her parents or her husband. That young woman has the right to make that decision. I feel that the unmarried young woman of the same age of seventeen should have that right to make the decision. The ideal would be for the pregnancy not to happen but the next ideal would be for all the parents to become involved. If you do not know, you should become aware that there are times teenagers deliberately create a pregnancy to get back at parents with whom they are having difficulty. It is not reasonable as Senator Labeledz has tried to express that someone could go to court. Senator Vard Johnson explained to us about our court procedures in this state, if you were not already aware. I hope Senator Labeledz listened very carefully, but perhaps she was already aware as well. It is a reasonable compromise to use seventeen as the dividing age. Senator Cullan, we did raise the age of marriage in our state. Originally a young woman of sixteen could be married and that law was changed. In fact, it was changed fairly recently, and if I am not mistaken, you were here at the time it was changed. Several of us were involved in that change. We felt that seventeen was a better age for a woman to be making serious decisions relating to her own life and we, as a body, said to the citizens of Nebraska, we do not feel that a sixteen year old is mature enough for that type of responsibility. It seems to me that seventeen is a fair age given the condition of our current state laws. All of the young women who are sixteen or under the age of sixteen would come under the requirements of Senator Labeledz legislation. If you adopt my amendment, it would exclude those who are over the age, seventeen or older. We did make the distinction for young women of that age when it comes to marriage. I feel that this would be a reasonable compromise. It would help make her bill more livable. It would not have as many devastating effects as it currently does. What am I asking

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you to do? I am asking you to amend into the amendment the restriction that a young woman must be over sixteen, must be seventeen before this freedom would be available. Under that age, it would be necessary for that young woman to have one of her parents become involved in the decision if the abortion is performed in this state. That does not prevent that same young woman from going to another state which has a different set of laws. It does make the Nebraska statute restrictive but perhaps not so restrictive as to disallow the legality of the entire legislation. I still feel that the rest of the proposed piece of legislation in LB 466 has some serious constitutional questions, but this would help the section which Senator Labeledz is trying at this time to amend into LB 466 be a compromise which would meet the realm of constitutionality for this section.

SPEAKER MARVEL: Your time is up.

SENATOR MARSH: Thank you very much, Mr. Speaker.

SPEAKER MARVEL: The motion is the Marsh amendment to the Labeledz amendment. All those in favor of the Marsh amendment to the Labeledz amendment vote aye, opposed vote no. Have you all voted? Senator Marsh. Okay, record.

CLERK: 10 ayes, 19 nays on adoption of the Marsh amendment, Mr. President.

SPEAKER MARVEL: The Marsh amendment lost. We are now on the Labeledz amendment and Senator Beutler, do you have an amendment to that amendment?

CLERK: Mr. President, Senator Beutler would move to amend the Labeledz amendment to LB 466: (Read Beutler amendment as found on page 2047, Legislative Journal.)

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I am seeking to tighten up the notice provisions on the amendment just a little bit because I am afraid that the way they are right now they are a little too vague, and what you have here is a criminal statute, and if the notice provisions are not explicit enough and if they are too vague, then they are going to be found to be unconstitutional. So what I am trying to suggest to you is that we be more explicit with the notice provisions and let me tell you exactly what I am changing. Right now we are requiring actual notice to one of the parents for twenty-four hours in advance and then it says, "If such parent or guardian cannot be notified after a reasonable effort, the notice requirements of this section may be satisfied by sending a notice". All right, there is a distinction there. You can

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give them actual notice which I assume means a telephone call or something to this effect where you actually talk to them and give them actual notice or you can send them this certified letter in the mail. All right, but the certified notice requirement to me is deficiently vague in two regards. First of all, it says, "after a reasonable effort", now I don't know what Senator Labeledz has in mind as a reasonable effort. If you call once to their home address, have you made a reasonable effort to notify them? Do you have to call two or three times? Do you have to call once at the office and once at home? I don't think it is very clear what a reasonable effort is, although I appreciate her effort...I appreciate the problem she is running into in trying to define what a reasonable effort is but I think that you can see that that is vague. Secondly, as far as sending the notice is concerned, it is to their last known address. Now how do you determine their last known address? Do you look in the telephone book? Do you look in the City Directory? Do you rely upon what the minor tells you? How do you make this determination? It seems to me that we are putting a bit much of a burden on these people to make some determinations that they are not going to know how to make. So what I am suggesting is that the language read like this. You can give the actual notice, but if you don't give the actual notice, then I think it should read like this, "If such parent or guardian does not receive actual notice...does not receive actual notice, the notice requirements of this section may be satisfied by sending notice to such parent or guardian by certified mail to the last known address of such parent or guardian as indicated by the minor seeking the abortion at least forty-eight hours in advance". So I am taking the vagueness out and putting certainty in and I think you have a more constitutional provision. Thank you.

SPEAKER MARVEL: Is there any further discussion on the Beutler amendment? We are fast running out of time. Senator Cullan, do you wish to speak?

SENATOR CULLAN: Mr. President, we have no objection to the Beutler amendment.

SPEAKER MARVEL: Any other discussion? Senator Beutler, do you wish to close? Senator Beutler, do you wish to close?

SENATOR BEUTLER: No, Mr. Speaker.

SPEAKER MARVEL: You don't wish to close?

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SENATOR BEUTLER: No, unless somebody has questions.

SPEAKER MARVEL: Nobody else has any questions. The motion before the House is the adoption of the Beutler amendment. Is there any further discussion? All those in favor vote aye, opposed vote no. The adoption of the Beutler amendment to the bill. While we are waiting for a few more votes, it is my privilege, underneath the South balcony, to introduce as guests of Senator Wagner, Shirley Meckel and Elva Grunkemeyer from Burwell, Nebraska. Are you folks still there? Will you stand up so we can say "hello"? The motion is the adoption of the Beutler amendment. Have you all voted? Record the vote, Mr. Clerk.

CLERK: 27 ayes, 0 nays on the adoption of the Beutler amendment, Mr. President.

SPEAKER MARVEL: The Beutler amendment is adopted. The motion is the adoption of the Labeledz amendment. Is there any further discussion on the Labeledz amendment? Senator Labeledz, do you wish to...?

SENATOR LABEDZ: Is there any more amendments to the amendment? Well, then I move for the adoption of the amendment with no further remarks from me.

SPEAKER MARVEL: The motion before the House is the Labeledz amendment. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 26 ayes, 7 nays on adoption of Senator Labeledz' amendment, Mr. President.

SPEAKER MARVEL: Motion is carried. The amendment is adopted.

CLERK: Mr. President, Senator Vard Johnson no longer wishes his. Senator Beutler, do you have an amendment to the bill? I am sorry, this was to the Labeledz amendment. Mr. President, Senator Chambers has a motion to the bill. Senator Chambers to amend LB 466 committee amendment: (Read Senator Chambers amendment found on page 2047 and 2048, Legislative Journal.)

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, if we are dealing with principle on this bill and the votes seem to me to indicate that people are dealing on principle rather than rational argument, we should make the principle pure. Either you believe that abortion is

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wrong or you don't. Either you believe that those who perform abortions are wrong or you don't. Now this is not one of those issues the way the votes have been going where you can say if you perform one, you put it on a scale of one to ten, and you said if you perform one, that is bad but it is not really wrong. If you perform two, that is a little worse but that is not really wrong, but by the time you get to ten, then you have done something wrong. That makes no sense. If ten abortions are wrong to be performed, one abortion is wrong to be performed because we are not talking about numbers, we are talking about a deed. So if the performance of ten abortions would be sufficient to bring the regulatory principles of this bill into play, the performance of one ought to do it. I know that some of you all get tired of me using words like "hypocrite" and "dishonest" and things like that, but you leave me no choice. You have framed it in moral terms. I look at Senator Lamb wide-eyed and innocent-faced over there on this particular issue and I think he would have to agree with me that he is looking at it as a moral issue and I will ask him. Senator Lamb, is that the way you are viewing the subject?

SENATOR LAMB: I just want to point out, Senator Chambers, that when the city sales tax issue was voted upon, you voted for that on Select File and voted against it every other time. I just don't understand that inconsistency in your voting record.

SENATOR CHAMBERS: I didn't see that as a moral issue and I made that clear but I am asking for your position on this. Do you see abortion as a moral issue?

SENATOR LAMB: Yes, sir.

SENATOR CHAMBERS: Do you think that the number of abortions is what determines whether it is wrong or not or is it the nature of the act itself?

SENATOR LAMB: I think it is the nature of the act. You are right.

SENATOR CHAMBERS: So would you say if regulations should be made where ten abortions are performed, regulations should exist where one is to be performed?

SENATOR LAMB: You make a very powerful argument. I would have to hear the arguments on the other side.

SENATOR CHAMBERS: But I am just asking for your point of view and we will deal with the others when their time comes.

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You were looking at me.

SENATOR LAMB: That was my mistake.

SENATOR CHAMBERS: Members of the Legislature, can you see what a difficulty arises when you begin to try to talk about an issue in moral terms. You cannot follow your principles to their logical conclusion. Now give me a moral issue like the death penalty and you will find no equivocation in me even where the murderers of the twenty-seven black youngsters are concerned in Atlanta, Georgia. I still don't equivocate. I don't like what has happened and it makes me swallow hard but I think there should be no death penalty imposed in that case. If I felt that some of you say you feel where abortion is concerned that at the instant of conception you have a human being, you would have me on your side against all abortions as I am against all capital punishments being carried out by the state. You have already conceded the ground to me. You have said it is the act of abortion which is wrong not the numbers. So my amendment is merely tracking the moral principle that you have established, Senator Cullan, Senator Bernice, Senator Higgins and Senator Dworak. If the regulation of abortion is what we are dealing with, and I have been lead to believe that it is, my amendment fits right in with that principle and for that reason I have offered it.

SPEAKER MARVEL: Okay, the motion is the Chambers amendment to the bill. Senator Higgins, do you wish to speak to that?

SENATOR HIGGINS: Yes, Mr. Speaker and Senators. Senator Chambers has said that what we are doing is contradictory and hypocritical. Many times I have sat in this Legislature and had myself and my fellow Senators chastised by Senator Chambers saying we are all hypocrites. I know all of you remember this many times. So I would like to pose a rhetorical question to those of you who are listening. Senator Chambers has also stated that he does not belong to any organized church because he believes those that are there are all hypocrites but he chooses to belong to this organization of hypocrites because he has called us hypocrites and those who go to church are hypocrites. Now here Senator Chambers is paid four hundred dollars a month to belong to an alleged hypocritical body and he is also given his own pulpit from which to preach to the rest of us about what hypocrites we are. Whereas the hypocrites in church, he has to sit in the pew and listen to somebody else preach to him about maybe hypocrisy. So the only question I have to ask is, if he is once again going to tell all of us we are hypocrites and we are contradictory, you will have to ask yourselves, Senators, is he here because he

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has a pulpit to preach from and he gets paid four hundred bucks to do it, and is he not in church because he doesn't get a pulpit and he doesn't get four hundred a month? In other words, he seems to kind of think that any time he starts jabbing at our conscience and calling us hypocrites that it is going to make us think that we should go his way but I ask you, based upon what you have heard him say, at least since I have been here, January 7th, who is the true hypocrite in the body? Thank you, Senators.

SPEAKER MARVEL: Senator Labedz, do you wish to speak to the Chambers amendment?

SENATOR LABEDZ: Just to say, thank you, Mr. Speaker, that I totally disapprove or do not support the amendment. I only wish I could because anybody performing any abortions, of course, I would disapprove of...even one and Senator Chambers is right in that respect when he says that if we disapprove or oppose abortion, we should oppose it even at one abortion per week. But a portion of the Indiana abortion statute requiring that all abortions including those during the first trimester of pregnancy be performed in a hospital or a licensed health facility is unconstitutional. Now that was appealed and affirmed in the Supreme Court in 1976. We chose ten abortions per week because we believe any doctor performing ten abortions a week is in the abortion business and, therefore, should be licensed as a clinic. I only wish that I could support one a week but I can't because ten abortions is a business. One abortion a week, even though I disapprove of it and I am sure the majority of the Legislature does, we cannot accept one a week. We have to go with ten a week. Thank you very much.

SPEAKER MARVEL: Senator Chambers, do you wish to close on your amendment?

SENATOR CHAMBERS: Mr. Chairman, I am somewhat puzzled by what I have heard here, not by Senator Higgins, she provides me with comic relief and I am very happy for that reason that she is down here but Senator Labedz' comment is what puzzles me. There have been many instances when a lot of us have labored to show the unconstitutionality of various provisions and that never stopped those who are against abortion from putting those provisions into the bill nor has it stopped the Governor from signing the bill, even in some instances where the Attorney General warned him, and constitutionality could not override morality. But now all of a sudden we see them begin to hedge their bets and all of a sudden morality is not really that important. So what I am suggesting is not that you forsake your principles but just stop talking

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about morality, Senator Higgins. That is all I say. Either you believe it is moral or you don't. Obviously Senator Labeledz' morality goes to a point where the Constitution begins to raise a question. Senator Cullan is probably in the same boat because he will vote against this amendment for the same reason. If constitutionality is really a consideration, I would like to ask Senator Labeledz a question.

SPEAKER MARVEL: Senator Labeledz, do you yield?

SENATOR LABEDZ: I have got a mouthful of popcorn.

SENATOR CHAMBERS: Senator Labeledz, you are familiar, I am sure, with one or two Attorney General opinions when they recently were offered suggesting that the provisions of the bill are not constitutionally firm. Are you prepared to change all those provisions of the bill that were addressed as constitutionally suspect so that they comply with the opinion of the Attorney General?

SENATOR LABEDZ: No, Senator Chambers, I....(interruption).

SENATOR CHAMBERS: Thank you. That is all I needed to find out. It is fair. You said, no. So what we have now is a picking and choosing of which constitutional provisions we are going to deal with, and, Senator Labeledz, I am not unfair. My time is short. You will get to speak when you make your motion to move your bill. But I hope that you will look at this amendment, and if you vote against it, then despite what Senator Higgins has mentioned about me coming down here to preach because I have such a huge salary, that I have a congregation which she did not say was attentive. She did not say that I could soften their hard hearts. You didn't say that, Senator Higgins. So it is obvious that I don't fulfill the role traditionally assigned to a preacher or minister or whatever but I will say this about the amendment. If you really think that abortions ought to be regulated, put the matter to a test like you are putting other propositions to a test in this bill. The Attorney General's office has waved red flags but they will be disregarded. Forget the torpedoes, full speed ahead. So why don't you bring this bill into closer conformity with your principles since what you are really doing is making a challenge as to what is going to be done with reference to abortion as far as the Legislature is concerned. I say as far as the Legislature is concerned because history here has shown that what the courts have ruled will make not too much difference. I am offering the amendment, and because I think it is so important, I



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am going to ask for a Call of the House, which I haven't done in some time, and a roll call vote.

SPEAKER MARVEL: A Call of the House has been requested. Shall the House go under Call? All those in favor vote aye, opposed vote no. Record the vote.

CLERK: 21 ayes, 1 nay, Mr. President, to go under Call.

SPEAKER MARVEL: The House is under Call. All legislators please take your seats and record your presence. Senator Koch, do you want to record your presence please? Senator Beutler, Senator Hoagland, Senator Pirsch, Senator Remmers, Senator Vickers. Are they all here? Will you please record your presence? The Clerk will call the roll.

CLERK: (Roll call vote commenced.)

SPEAKER MARVEL: (Gavel) The Clerk has trouble hearing the vote.

CLERK: (Roll call vote continued.)

SPEAKER MARVEL: Could we have a little order in the room? We have trouble hearing the response to the request for the vote. We would appreciate your assistance. Go ahead, Mr. Clerk.

CLERK: (Roll call vote continued.) (See report of vote on page 2048, Legislative Journal.) 10 ayes, 33 nays, Mr. President, on adoption of the amendment.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, Senator Marsh now moves to amend the bill. The amendment is on page 1629 of the Journal.

SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, if you truly are interested in making this a constitutional provision, if you truly are interested in the health of the mother, you will adopt the amendment which says, "The performing of an abortion during the second trimester of pregnancy at any place other than a hospital is a Class IV felony". There is a compelling reason to have abortions during the second trimester performed in a safe place with the necessary medical safeguard available. The Supreme Court has declared that the state has a compelling reason to interject safeguards for the safe health of the mother,

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for the safe health of the woman who is having an abortion performed. The state does not have the right to interfere during the first three months of a pregnancy but the state does have a right during that second trimester to regulate abortion. If you are interested in the health and future of the health of the woman who has decided for whatever reason to have an abortion, help put this amendment in LB 466. 466 would be a legitimate piece of legislation concerned for the health and well-being of the young woman or middleaged woman or older person involved when the pregnancy is being terminated during the second trimester. The Supreme Court has ruled that this can be legally adopted by a state to safeguard the health of the woman. That is a legitimate reason for mandating that second trimester pregnancies only be terminated in a hospital. I urge your adoption of the amendment.

SPEAKER MARVEL: Senator Dworak, do you wish to speak to the Marsh amendment? Senator DeCamp, do you wish to speak to the Marsh amendment?

SENATOR DeCAMP: Yes, Mr. President and members of the Legislature, the Marsh amendment, at first it sounds kind of appealing. In fact, I had thought about utilizing the bill for putting such an amendment on myself. Of course, the amendment results from a Supreme Court decision recently, a notation of the Supreme Court that said that after the first trimester, you know, you can command that abortions be performed in a hospital. In other words, it looked like indeed this was a change in the Supreme Court's position and a tightening up of their previous rulings on the subject of abortion. Now as I say I had discussed the possibility of putting this on myself and then I did some research and some thinking and I concluded not only would I not offer the amendment, there was some very compelling reasons not to and to oppose it. Obviously, the number one reason I guess if you are interested in the legislation itself, if that is your interest, Bernice's proposal here, it guts all that. It does wipe that out. So beware of that. So if you were wanting to save Bernice's proposal, obviously you would not want to adopt this amendment. But let's go from a different aspect. Remember Nebraska has pioneered most of the...most of the nationwide laws on the subject of abortion since 1973 that forced definitions by the U. S. Supreme Court of what is allowed and what isn't allowed, so on and so forth. One of the major things, the thing that Senator Chambers and others on this floor, myself particularly, have argued in and out has to do with a magic word called "viability", and I don't know how many of you are aware of it, even though we have said it a thousand times, Nebraska law does

not have any trimesters. You don't have the first three months and you don't have the second three months or the third three months. You don't have any of that. We have gone on the theory of viability for this reason, first of all, to force the Supreme Court to start defining when viability is instead of saying automatically at three months something occurs, automatically at six months, and the Supreme Court has started in some of the decisions to narrow the range to say you can have controls and we don't know as much as we did about viability sometime before, and, indeed, the risk that Nebraska took in not having any of these three month, three month, three month periods has paid off. As I say, our definition, the definition we have put into our law of viability has been upheld by the courts which most people felt it wouldn't be. It has been so we have made progress there. By adopting the Marsh amendment, we would in a sense be abandoning the whole theory, the heart of the Nebraska abortion legislation in going to the three, three trimester theory and I would suggest that that is unwise. I would suggest that the Supreme Court decision that just came down on saying you could command a hospital is indeed more restrictive but there was not enough information in that decision. It was just more a footnote than anything else. To base anything on...in this particular subject and any major changes like this in the abortion laws, we should be waiting until next year to even look at them. I would like to say one final thing. You know everybody talks about what is unconstitutional, how this is unconstitutional and that is unconstitutional. Look at the other side of the coin. Nebraska's law has not been declared unconstitutional. You see, that is what you all keep forgetting. All you people that are always opposed to it, you had a couple pieces stricken out under the severability clause, and by the way, they were pieces which I stood right at this very identical microphone and told you the courts would strike down a couple of pieces and indeed they did, but the bulk of it, eighty, ninety percent, the court said is constitutional and it is what we are operating under. Now as I say, everybody always gets on this constitutional...you lost this case. Did you lose the preacher case? Well, I don't know. You listened to a preacher here this morning, didn't you? You listened to one yesterday and I reckon you will listen to one Monday. Did you lose or win the preacher case? I would kind of say you won it because the main thing that I think my good friend Ernie wanted to do was to run the preacher out of the room. Well, Ernie made it so you couldn't pay him and I kind of didn't want to pay the preacher anyway but we have still got him. In fact, we have got a whole host of them. So did we win or lose that? I think we won. It was

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declared it was constitutional to keep our preacher.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Ten seconds.

SENATOR DeCAMP: So you have got to look at both sides of this constitutionality thing. Our laws are being upheld and so we use the courts to define or refine or knock out a little piece, A, B, or C, but basically we have been winning right along the line and I think we will continue to.

SENATOR NICHOL: Senator Chambers, did you wish to speak to this motion?

SENATOR CHAMBERS: Very briefly, Mr. Chairman, but before I do, bless you, my son, with reference to Senator DeCamp. That was quite a...well, okay. I would like to ask, Senator Marsh, does your amendment strike the other provisions from the bill?

SENATOR MARSH: Yes, sir, it strikes all the unconstitutional sections and inserts a constitutional provision.

SENATOR CHAMBERS: Thank you. Members of the Legislature, this is an issue on which I think I will prefer to side with. It is, I think, reasonable and rational because there does come a point in a pregnancy where the state is entitled to, and I think has an obligation to provide certain safeguards to ensure that the health of all involved will be protected. Since I don't know how to pinpoint the instant of viability, and since it might occur at different times by the calendar in different situations, wherever there is the possibility that what is contained in the mother's body can survive outside of her body, wherever that point is reached timewise, that becomes a concern of the state, and if an abortion should occur under such circumstances, the life of the fetus should be maintained, and a hospital setting is the only place where there would be a realistic chance for this to occur. Now as to the other provisions in the bill, I won't even talk about them very much anymore because we have been through it all but I had a question I wanted to ask Senator Labedz. I won't ask it on this particular amendment. I will address it to her if I decide to at the time that she makes a motion to move the bill but I am in favor of Senator Marsh's amendment.

SENATOR NICHOL: Senator Labedz, did you wish to speak to this? Senator Howard Peterson? The question has been called. Do I see five hands? I see three, four, okay, I do see five

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now. The question is, shall debate cease? All those in favor signify by saying aye, opposed nay. Record. Mr. Clerk.

CLERK: 27 ayes, 0 nays to cease debate, Mr. President.

SENATOR NICHOL: Debate has ceased. Senator Shirley Marsh, do you wish to close please?

SENATOR MARSH: If you want to have a piece of legislation which speaks to the issue which the introducer said was her concern, the health of the mother, then the adoption of this amendment would be paramount in your plan. This is one of the provisions which the Supreme Court has said the state has the right to speak. In this amendment, it says, the performance of an abortion during the second trimester of pregnancy at any place other than a hospital is a Class IV felony. If anyone is performing an abortion, that individual would know that unless the patient were under the safeguards of a hospital and the support staff available at a hospital, for the hospitals in our state are supporting the life and health of the woman who is requesting an abortion. Do you remember before abortions were legal, we still had abortions. Not only were abortions performed but many of the young women and the middleaged women died as a result of the performance of that abortion. Outlawing abortion does not stop abortion but we can speak to one of the requirements which the Supreme Court has declared a state can speak to, and that is, to help safeguard the lives of the women involved. This would help safeguard the lives of the women involved. Our Supreme Court has declared that during the first trimester the state does not have the compelling interest to regulate abortions. During the second trimester, the state does have a compelling reason to regulate abortions. Besides that, don't you think it would be nice to help Shirley Marsh pass some abortion legislation. Thank you.

SENATOR NICHOL: Before you vote on the amendment, I would like to call your attention to the North balcony where Senator Goodrich has several guests in the balcony and they are fifty fourth graders from Holy Cross School in Omaha, Nebraska, and two chaperones, Salvatore Sampugnaro and Sister Mary Francis. They are in the North balcony. Would you welcome them please to the Legislature? We are now voting on Senator Marsh's amendment. All those in favor signify by voting aye, opposed nay. Record, Mr. Clerk.

CLERK: 10 ayes, 20 nays, Mr. President, on adoption of the Marsh amendment.

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LB 22, 22A, 144,  
LB 144A, 138, 188A,  
LB 207, 207A, 253,  
LB 466, 253A, 376, 548

SENATOR NICHOL: The amendment fails. Mr. Clerk, do you have anything else?

CLERK: I have nothing further, Mr. President.

SENATOR NICHOL: Senator Labedz, would you like to speak to the bill?

SENATOR LABEDZ: Thank you, Mr. President. I move for the advancement of LB 466 to E & R engrossing, and unless there is going to be some debate, I will offer further comments on my closing.

SENATOR NICHOL: Senator Cullan.

SENATOR CULLAN: Mr. President, just one thing for the record and that is I want to state for the record that I voted against the Marsh amendment, not because I believe that the concept of hospitalization is a bad one, but because we did not have adequate chance to review that amendment thoroughly and sufficiently at this point in time. We may very well sponsor some similar legislation in future years. Thank you.

SENATOR NICHOL: We are now voting on the advancement of LB 466. All those in favor signify by voting aye, opposed nay. Record, Mr. Clerk.

CLERK: 28 ayes, 9 nays, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Motion carried. The bill advanced.

CLERK: Mr. President, a few items to read in, if I may. I have an appointment letter from the Governor. That will be referred to the Executive Board for reference, Mr. President.

Mr. President, a communication from the Governor addressed to the Clerk. (Read: Re: LB 22, 22A, 144, 144A, 188, 188A, 207, 207A, 253 and 253A. See page 2049, Legislative Journal.)

Mr. President, Senator Maresh would like to print amendments to LB 548 in the Legislative Journal; Senator Dworak to print amendments to LB 376 in the Legislative Journal.

Your committee on Retirement gives notice of hearing on gubernatorial appointments for two, Thursday, May 12 (sic).

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LR 185  
LB 70, 99, 134, 146, 250,  
404, 466, 497, 543.

SENATOR SCHMIT: Mr. President, I move the bill be readvanced to Final Reading.

PRESIDENT: Motion to readvance to Final Reading. All those in favor signify by saying aye. Opposed nay. The bill is advanced to Final Reading and we are on Final Reading on LB 543, Mr. Clerk.

CLERK: (Read LB 543 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 543 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 2071 of the Legislative Journal.) 40 ayes, 4 nays, 5 present and not voting, Mr. President.

PRESIDENT: LB 543 passes with the emergency clause attached. The Chair recognizes Speaker Marvel since it's noon, high noon.

SPEAKER MARVEL: Well, I have got some figures here but I will wait until after lunch and I move that we recess until about 1:20.

PRESIDENT: All right. The Clerk has some matters to read in real quickly and then I will call that motion.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 466 and find the same correctly engrossed. (See page 2072 of the Legislative Journal.)

Communication from the Governor addressed to the Clerk regarding LB 70, 99, 146 and 250. (See page 2072 of the Legislative Journal.)

Mr. President, I have a Reference Report referring a gubernatorial appointment to the Public Health and Welfare Committee for confirmation hearing. (See page 2071 of the Legislative Journal.)

Mr. President, new resolution, LR 185, offered by the Speaker. (Read LR 185 as found on page 2073 of the Legislative Journal.)

Mr. President, Senator DeCamp would like to print amendments to LB 497; Senator DeCamp to 134; and Senator Warner to 404. (See pages 2073 and 2074 of the Journal.) That is all that I have.

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LB 346, 257, 257A, 466

SPEAKER MARVEL: All provisions of law having been complied with, the question is shall the bill pass? All those in favor vote aye, opposed vote no. We are voting on LB 346 on Final Reading. Have you all voted? Record the vote.

CLERK: (Record vote read. See pages 2173 and 2174, Legislative Journal.) 44 ayes (sic), 0 nays, 5 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The Clerk will now read on Final Reading LB 257 with the emergency clause.

CLERK: (Read LB 257 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. With the emergency clause attached, 257E. Have you all voted? Record the vote.

CLERK: (Record vote read. See page 2174, Legislative Journal.) 38 ayes, 11 nays, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The Clerk will now read on Final Reading LB 257A with the emergency clause.

CLERK: (Read LB 257A on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass with the emergency clause attached? Those in favor vote aye, opposed vote no. 257A. Have you all voted? Record.

CLERK: (Record vote read. See page 2175, Legislative Journal.) 35 ayes, 14 nays, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The next bill, LB 466 with the emergency clause.

CLERK: Mr. President, Senator Labeledz moves to return LB 466 to Select File for specific amendment.

SPEAKER MARVEL: Okay, Senator Labeledz.

SENATOR LABEDZ: Thank you, Mr. Speaker. I apologize also for having to bring this bill back, but as you recall on Select File, there was some questions brought up by Senator Johnson and in this last week or ten days we have gone over



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it extensively and decided that perhaps we should put in the amendment that was laid on your desk this morning pertaining to the confidentiality for the petitioning minor. We are in doubt as to whether it is needed, but if there is going to be any procedural problems, I am sure that this amendment would correct the situation. I won't have anything further to say on it because of the time and I urge the members of the body to adopt this amendment to...well, first to bring the bill back and then adopt the amendment to LB 466.

SPEAKER MARVEL: The first motion is to bring the bill back. Those in favor vote aye, opposed vote no. Record the vote.

CLERK: 29 ayes, 1 nay on the motion to return the bill, Mr. President.

SPEAKER MARVEL: The bill is returned. Now do you want to make a motion to adopt?

SENATOR LABEDZ: I make the motion to adopt the amendment to LB 466 as presented to you this morning.

SPEAKER MARVEL: All in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 32 ayes, 0 nays on the motion to adopt Senator Labedz' amendment.

SPEAKER MARVEL: Motion is carried. The amendment is adopted.

SENATOR LABEDZ: I move to advance LB 466 to E & R engrossing.

SPEAKER MARVEL: All those in favor of...Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I am not going to spend a lot of time debating the bill because I know its fate has been determined already and it will be advanced but what ought to be considered when you look at the procedure that is being used on this bill is how unrealistic some of the introducers are and how sometimes too much reliance is placed on young law students instead of those people who have had experience in dealing with the law and are trying to help make a law constitutional, and for those conservatives in the body who are concerned about the spending of nickels and quarters on bills like ADC, we should consider the cost of continuing to have to...having to reprint these bills because they are not properly processed as they move.

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LB 466, 12, 184, 477,  
477A, 561

Since this was printed as a Final Reading bill and it has been returned now, it is going to have to be reprinted again. So I just call that to your attention and I want it made a matter of record. Thank you.

SPEAKER MARVEL: The motion is to readvance the bill. All those in favor of that motion say aye, opposed no. All in favor of the motion vote aye, opposed no. Have you all voted? Record the vote.

CLERK: 28 ayes, 7 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: Motion is carried. The bill is advanced. On Final Reading. LB 477. The Clerk will read.

CLERK: Mr. President, if I may right before that, Senator Warner would like to have a meeting of the Special Legislative Working Group on Federal-State-Local Fiscal and Program Policy.

Senator Beutler moves pursuant to Rule 6, Section 11, to override the Governor's veto of LB 12.

I have an Attorney General's opinion addressed to Senator Wesely on LB 561; and Senator Schmit on LB 184.

And I have a report, Mr. President, of session employee expense to be inserted in the Journal. (See page 2181.)

(Read LB 477 on Final Reading.)

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

CLERK: (Record vote read. See page 2182, Legislative Journal.) 43 ayes, 4 nays, 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The Clerk will now read LB 477A.

CLERK: (Read LB 477A on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 477A. Have you all voted? Record the vote.

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LB 316, 466, 531

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Everett D. Brailey, Pastor of St. John's Lutheran Church, Rt. #1, Auburn, Nebraska.

REVEREND EVERETT D. BRAILEY: (Prayer offered.)

SPEAKER MARVEL: Record your presence please. Will you all please record your presence? Will you please record your presence? Okay.

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

SPEAKER MARVEL: Do you have some items to read in?

CLERK: Yes, sir, I do. Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined LB 466 and find the same correctly engrossed; LB 531 correctly engrossed. That is signed by Senator Kilgarin as Chair.

Mr. President, I received a resolution from the State of North Carolina regarding concern of the General Assembly over the recent murders of black children in Atlanta. That will be on file in my office.

Mr. President, a report of registered lobbyists for the week of May 14 through May 21.

Mr. President, I have received a series of reports; two from the Department of Roads, two from the Department of Administrative Services, Buildings and Grounds Division pursuant to statutory requirements. Those will be on file in my office.

SPEAKER MARVEL: Will you please take your seats and prepare for Final Reading? Okay, we are going to proceed for Final Reading and the first bill is LB 316. (Gavel.) The Clerk will read on Final Reading LB 316 with the emergency clause.

CLERK: (Read LB 316 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. 316E. Record the vote.

CLERK: (Record vote read. See page 2210, Legislative Journal.) 40 ayes, 2 nays, 7 excused and not voting, Mr. President.

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LB 412, 466

the bill today because I do have an Attorney General's Opinion that I understand will be received late this afternoon, and maybe I don't need the amendment and then it could be acted upon tomorrow afternoon.

PRESIDENT: So you want the bill passed over at this time?

SENATOR WARNER: I would ask unanimous consent.

PRESIDENT: Speaker Marvel, there is no objection is there to passing over 412 today?

SENATOR WARNER: Senator Newell's bill.

PRESIDENT: All right. No objection. The Speaker's order will put it over until tomorrow. We will then proceed, Mr. Clerk, with the Final Reading of LB 466.

CLERK: (Read LB 466 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 466 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 2366 and 2367 of the Legislative Journal.) 37 ayes, 9 nays, 4 present and not voting, Mr. President.

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LB 376, 466

PRESIDENT: LB 466 passes with the emergency clause attached. The next bill on Final Reading is LB 376.

CLERK: (Read LB 376 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 376 pass? All those in favor vote aye, opposed nay. Have you all voted? Senator DeCamp.

SENATOR DeCAMP: Mr. President, I would ask for a roll call vote.

PRESIDENT: All right, roll call vote has been requested. All members will please be at your desks. We are on Final Reading. All members will please remain at your desks, and we are ready for a roll call vote, Mr. Clerk. Proceed with the roll call vote. Everybody..(gavel).... everybody be at your desk or we are not going to proceed with the roll call vote until everybody is at your desk. All right, proceed with the roll call vote.

CLERK: Roll call vote. 24 ayes, 24 nays Mr. President.

PRESIDENT: I guess I can vote. I guess I can vote for once. Yes, I can. Thank you everybody for giving me a chance to vote once. Voting aye. Announce the vote. Yes, Senator Chambers.

SENATOR CHAMBERS: The vote had been announced before the Chair voted.

PRESIDENT: No, I had not announced any vote. I said if that is a tie, then I will break the tie. That's all I said.

SENATOR CHAMBERS: Mr. Chairman.....(interruption).

PRESIDENT: How could I vote unless I knew what the vote was?

SENATOR CHAMBERS: And, Mr. Chairman, how would you know if it hadn't been announced? But I just wanted to make that part of the record.

PRESIDENT: That's correct, how could I know. You have answered my question. Okay, read the results.

CLERK: 25 ayes, 24 nays, Mr. President.

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LB 138, 216, 320, 376,  
406, 466, 512.

PRESIDENT: All right, would you verify the vote?  
Proceed to verify the vote.

CLERK: (Reread the roll call vote as found on page  
2370 of the Legislative Journal.) 24 ayes, 23 nays,  
2 present and not voting, Mr. President.

PRESIDENT: The motion fails...the bill fails on Final  
Reading.

ASSISTANT CLERK: (Read LB 320 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure  
having been complied with, the question is, shall LB 320  
pass with the emergency clause attached? All those in  
favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read the record vote as found on pages  
2370 and 2371 of the Legislative Journal.) The vote is  
37 ayes, 12 nays. All members were voting.

PRESIDENT: All right, LB 320 passes with the emergency  
clause attached. The next bill on Final Reading is  
LB 406, Mr. Clerk. And again I would urge all members  
to please stay at your desks as much as possible. It  
is very confusing to see everybody running around and  
politicking on the floor. It just shouldn't be and the  
people that sit there would like to have those others  
sit there too. Thank you.

CLERK: Mr. President, may I read some material in?

PRESIDENT: Yes, you may.

CLERK: Mr. President, I have a proposed rules change  
offered by Senator Wiitala, and, Mr. President, the  
bills we read this morning are ready for your signature.

PRESIDENT: Okay, while the Legislature is in session  
and capable of doing business, I propose to sign and I  
do sign LB 138, LB 512, LB 466, LB 376, LB 216. Proceed  
then, Mr. Clerk, with the reading of LB 406.

CLERK: (Read LB 406 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure  
having been complied with, the question is, shall LB 406  
pass? All those in favor vote aye, opposed nay. Record  
the vote.

CLERK: (Read the record vote as found on pages 2371

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LB 138, 216, 376, 466, 512

CLERK: Mr. President, one item. Your enrolling clerk has presented to the Governor LBs 138, 512, 466, 376 and 216.

PRESIDENT: The Chair recognizes Senator Hefner for purposes of an announcement.

SENATOR HEFNER: Mr. President and members of the body, since we are going to adjourn tomorrow and will not be here in June, I want to make this announcement today. If you remember, June in Nebraska is Dairy Month and I am going to give you just a few facts and figures about Nebraska's dairy industry. There are 13 cheese plants in Nebraska located in all parts of Nebraska. Seventy million pounds of cheese are produced in this state each year. Fourteen million pounds of ice cream are produced...were produced last year. And would you believe this, there are 120 thousand dairy cows in the state. Cash receipts from dairy products were approximately \$165 million last year. The dairy industry is a very important and competitive industry in Nebraska. It adds much to the economy of the state. And right now I am having some of the Pages pass a little package of cheese to you and you can have your choice...I think there is six different varieties, and these are complements of the new cheese company in Hartington, Nebraska, located in the heart of Nebraska in good old Cedar County in northeast Nebraska. Thank you very much.

PRESIDENT: The Chair at this point....Senator Cope, just a moment, I have some guests to introduce and then I will recognize Senator Cope. The Chair would like to introduce on behalf of Senator Labeledz some guests from the great State of California, Paul Kalmanovitz, Jack Miller, Bernie Orsi and Marv Bowerman, all from the Falstaff Brewery. Would those gentlemen stand with Senator Labeledz back there and be recognized. Welcome to this nation's only Unicameral Legislature, gentlemen. Now, Senator Cope, I recognize you.

SENATOR COPE: Mr. President and members, if we would have just known this a little ahead of time, we would have had cheese from the Ravenna Cheese Company which is in District 36, my District, one of the 13.

PRESIDENT: The Chair recognizes Senator Rumery.

SENATOR RUMERY: Mr. President and members of the Legislature, I am glad to see two non-cowmilkers supporting the dairy industry. Some of us have known this for some time and I am glad they have taken the leadership to

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LB 129, 129A, 322, 376, 466

CLERK: (Read the roll call vote as found on pages 2420 and 2421 of the Legislative Journal.) 30 ayes, 14 ayes on the motion to override 129A, Mr. President.

PRESIDENT: Motion carries and LB 129A has become law notwithstanding the action of the Governor. Now, some matters to be read in, Mr. Clerk.

CLERK: Yes, sir. Mr. President, before we proceed with the next motion, I must read the veto message on the bill.

PRESIDENT: All right, proceed.

CLERK: At the same time, Mr. President, I would advise you that your enrolling clerk has presented to the Governor for his approval the bills that were read today on Final Reading. (See page 2421 of the Journal.)

Mr. President, letter from the Governor addressed to the Clerk. (Read letter regarding LB 466 as found on page 2421 of the Legislative Journal.) (Read letter regarding LB 129 as found on page 2421 and 2422 of the Legislative Journal.)

Mr. President, I have an Attorney General's Opinion addressed to Senator Nichol and Clark and Marvel. (See pages 2422 through 2424 of the Legislative Journal regarding LB 376.)

Mr. President, veto message on LB 322 addressed to Dear Mr. President and Senators. (Read message from the Governor as found on page 2422 of the Legislative Journal.)

Mr. President, I have a motion from Senator Schmit that LB 322 become law notwithstanding the objections of the Governor.

PRESIDENT: Senator Schmit on the motion that LB 322 become law notwithstanding the action of the Governor. Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, LB 322 was a bill which was enacted several days ago when I was absent. It was passed into law. It was refused to be signed by the Governor. The bill is a very simple bill but it does have in it the objections. The Governor objected to the bill because there was an amendment placed on the bill which provided that the Director of Agriculture did not have to sign