

January 13, 1982

LB 69, 139, 805-809

SENATOR CLARK: The bill is advanced. We are now ready for #7, General File, priority bill and I understand that wants to be passed over. Is that right?

CLERK: Yes, sir. I have a request to have the bill passed over, Mr. President.

SENATOR CLARK: Alright. We're ready for #8 on General File, LB 139 by Senator Marsh. Oh, you've got a few things to read in first.

CLERK: Yes, sir, I do. Mr. President, I have a new resolution, LR 205. (Read. See pages 260-261 of the Legislative Journal.) Mr. President, pursuant to our rules that resolution will be laid over.

Mr. President, I have a series of new bills. (Read by title for the first time LB 805-809. See pages 261-262 of the Legislative Journal.)

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The next bill is LB 139.

CLERK: (Read.) The bill was first read on January 13 last year. At that time it was referred to the Banking, Commerce and Insurance Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Banking, Commerce and Insurance Committee.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, the bill that about a year and a half time has been invested in trying to work out a solution and maybe it is living proof that if you push hard enough long enough you can bring the sides together. I am going to ask to defeat the committee amendments unless your amendment, Senator Marsh... Senator Marsh has an amendment that has been agreed upon by all sides in this controversy from the Insurance Department through the opponents, proponents and so on and so forth. Is your amendment to the committee amendments or is it a separate amendment?

SENATOR MARSH: I believe it is a separate amendment. Patrick, is that the way it is written?

CLERK: Senator, it is written so that it amends the standing committee amendments.

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LB 429, 599, 601, 610, 702,
732, 748, 765, 808, 809,
834, 854, 864, 869, 937, 959

SENATOR NICHOL: Senator Clark, did you wish to close, please?

SENATOR CLARK: Mr. President, I would move that the bill be advanced to E & R. I think that Senator Newell might have an amendment on for Select File. Is that right, Senator Newell? Alright, then I would move the bill be advanced.

SENATOR NICHOL: The question is, shall LB 702 be advanced. All those in favor vote aye, opposed no.

CLERK: Senator Nichol voting yes.

SENATOR NICHOL: Record, Mr. Clerk.

CLERK: 29 ayes, 2 nays, Mr. President, on the motion to advance the bill.

SENATOR NICHOL: The bill is advanced. I would like to announce that Senator Don Wesely has some guests under the North balcony, Brad Pennington, Marty Walters, John Ahrends, all from Robin Mickle Junior High School in Lincoln, Nebraska. Would you please welcome them to our Legislature. Mr. Clerk, do you have something you would like to say?

CLERK: Something I must say, Senator. Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 834 and recommend that same be placed on Select File and that is signed by Senator Kilgarin as Chair. (See page 804 of the Journal.)

Your committee on Business and Labor whose chairman is Senator Barrett reports LB 765 advanced to General File with committee amendments; 599 indefinitely postponed; 610 indefinitely postponed; 732 indefinitely postponed; 864 indefinitely postponed; 937 indefinitely postponed and 959 indefinitely postponed, all signed by Senator Barrett as Chair. (See pages 804-805 of the Legislative Journal.)

Your committee on Government, Military and Veterans Affairs reports LB 601 advanced to General File; 748 General File and 854 General File with committee amendments attached. Those are signed by Senator Kahle as Chair. (See page 805 of the Legislative Journal.)

Your committee on Miscellaneous Subjects reports LB 808 advanced to General File; 809 General File; 869 General File; 429 indefinitely postponed, all signed by Senator Hefner as Chair. (See page 805 of the Legislative Journal.)

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LB 601, 809

City Planning Commissions but not coordinated.

SENATOR NEWELL: I understand that. Okay. I would like to ask one other question. Did...is the County Officials Association in favor of this bill?

SENATOR NICHOL: I believe that they are.

SENATOR NEWELL: Did they testify that they have or have you been given information that they are in support of it?

SENATOR NICHOL: Yes, I believe that they did.

SENATOR NEWELL: And you don't know what my own county, Douglas County's position on this legislation is, do you?

SENATOR NICHOL: I would have to look it up and I don't know that they even appeared.

SENATOR NEWELL: Well, at this point in time I see I will not oppose the bill although I reserve the right to figure it out and talk to you about it on Select File.

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

SENATOR NICHOL: Mr. President, only to say that this would leave it so that the majority of the members of the County Planning Commission would be from the rural area. However, it would allow more than two members of the Commission to be from the cities or towns as you might put it that way. So it still is fair but what has been happening is that when they have large numbers on the Commission with only two being from the city or cities or towns, they are greatly in the minority. They will still be in the minority no matter what, but in some cases some of the people wish to serve and they could not because of the numerical proportion in the bill...in the law.

SPEAKER MARVEL: The motion is to advance LB 601 as explained by Senator Nichol. All those in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 30 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Item LB 809.

CLERK: LB 809 offered by Senator Stoney. (Read title.) The bill was read on January 13, referred to Miscellaneous

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LB 809

Subjects for hearing. The bill was advanced to General File, Mr. President. I have no amendments on the bill.

SPEAKER MARVEL: The Chair recognizes Senator Stoney.

SENATOR STONEY: Mr. President and members of the Legislature, LB 809 and a companion bill, LB 869, which will follow, attempt to address a serious problem which exists here in the State of Nebraska. And the problem that LB 809 addresses is that of minors utilizing illegitimate identification to purchase alcoholic beverages. Now this is not only a concern of the parents of the youth who participate in this activity but also to law enforcement and also to the Liquor Commission. Additionally, it is important to the liquor industry because in many cases, in all cases rather, those people that would use such identification do place in jeopardy the licenses of those individuals. The present penalty in Nebraska for a minor misrepresenting their age to purchase alcoholic beverages is a Class III misdemeanor, and the penalty for this offense is a maximum of three months or a fine of \$500, or both. LB 809 merely establishes a minimum in law by saying that the minimum penalty would be 24 hours imprisonment or a \$100 fine, or both. Now it is my understanding in visiting with people who have been exposed to this problem, there seems to be probation that is given in each instance and never is a penalty imposed. I think with the establishment of a minimum penalty it would express the interest of the Legislature in attempting to deal with this problem, and I also feel that it would act as a tremendous deterrent for those youth who would use these altered identifications in purchasing these beverages. That would conclude my opening remarks. I would move that LB 809 be advanced to E & R Initial.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, as you might expect, I am opposed to this bill. I am opposed to the provision and I am opposed to the philosophy of requiring lock-up time any time an issue arises with which we disagree. Judges and prosecutors are far more familiar with the operation of the criminal justice system and I have consistently while a member of this Legislature tried to point out that you can't simply put people in jail and feel that you have solved a problem. What you do is transfer it to whether it is the Department of Corrections at the county level, the City Jail at the local level or the State Penitentiary at the top level. It is a mistake. It is not going to work. It will not solve the problem.

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It will merely create the impression in the minds of the public that the Legislature is "tough on criminals". Well, I don't feel that this is the direction that the Legislature ought to be moving and fortunately Chief Justice Krivosha has begun to speak out and even if the Legislature won't listen, the public will. If you are going to talk...he tried to use an example for business people so that they would understand, you are going to continue to increase your inventory but you don't have any turnover, what you have to do is increase your storage space. He was trying to use the language that business people could understand. We'll now substitute human beings for inventory, substitute penal facilities for storage space. And if you are going to impose mandatory sentences and continue to put people in the lock-up with no possibility of probation, then you have got to increase the space available. Now I am certain that if a child of anyone of us, or a child of the friend of any of ours would come within the provinces of this law, we would not want that person to have to go to jail for 24 hours. So I think it is a bad bill, and here is what will result, and were I a prosecutor is what I would do. Since there cannot be any plea bargain, I simply would not file a charge. You cannot impinge on the discretion of the prosecutor and that is recognized on page 3 in the nature of the language...if the prosecutor has sufficient evidence to convict a person. Well, now the prosecutor doesn't determine whether the person will be convicted first of all. The prosecutor can only determine whether or not there might be a likelihood on the basis of the evidence that a conviction could be obtained under any circumstances dealing with any trier of the facts. So I think it is a bad bill and will result in no charges being brought at all rather than a charge being brought and the person being given 24 hours in jail. Hey! Thank you. Ordinarily I don't do that but this is one of the times I couldn't hear myself talk. Now there are a lot of times when I will be visiting with a person on an issue, but I don't talk at the top of my voice when somebody else is speaking. I recognize the contempt that I enjoy in this body but there comes a point when I am going to assert myself and insist on certain considerations. Usually when the Chair tries to obtain order I will say, never mind, forget it, it doesn't matter, they don't have to listen. And that is the case here. But literally, I could not hear what I was saying. I was having to raise my voice louder and louder and I don't like to do that unless it is on purpose to make a point. I don't like to just raise my voice simply to be heard. Now that I have your attention or at least some silence, I am going to say again, this is

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a bad bill. The intent is to lock people's children up and were it the child of any of us we wouldn't want them to spend the 24 hours. But here is the main point that I will get across to those of you who are law and order. Chief Justice Krivosha has pointed out that the idea of mandatory sentences is not going to work because you are not increasing the jail facilities in which to lock these people up. You simply transfer the problem from the churches, the schools, the family or wherever the problem arises and put it on the corrections people. That is not fair. It is not proper for them. But more importantly, I don't think it is proper to do this to the young people. They are following the example that older people give to them in practically everything they do. If they use the false identification, it is to have access to those things that grown people have shown them are all right, even the people who go to church, those who sit on the legislative floor, even, for example, when we talk about bills to impose mandatory sentences on drunk drivers....

SPEAKER MARVEL: Fifteen seconds.

SENATOR CHAMBERS: ...there will often be drinking while that particular discussion is under way. So if you want the prosecutor to be in a position of bringing no charge at all, then I think you should pass this bill. Otherwise, leave it as it is and let them put the child on probation. The idea is not simply to lock somebody up but to try to teach the lesson that what they did should not be done. If I were a prosecutor, I would not prosecute anybody under this bill. I am not a prosecutor but I know there are some who feel the same way that I do. I am opposed to the bill.

SPEAKER MARVEL: Time is up. Senator Hefner, your light is on, for what.....?

SENATOR HEFNER: Mr. President, members of the Legislature, I would just like to talk briefly about this bill. I support it. The Miscellaneous Subjects Committee held a hearing on it and during this hearing the people that testified proved that there was a need for this bill, and I commend Senator Stoney for bringing it forth. What this bill does, it provides a minimum penalty for any person using an altered ID in purchasing liquor, and at the present time there is a lot of this going on. And, Senator Chambers, it isn't mandatory that they provide a 24-hour imprisonment. It says, or 24-hour imprisonment, or \$100 fine, or both. And so the judge does have a variation there. And, of course, we all know that we do have a maximum penalty right now, and that is a Class III misdemeanor. And so I

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would say to this group, I urge you to advance this bill to the next stage of debate.

SPEAKER MARVEL: The time has elapsed. Senator Chambers, do you wish to make any other comments? I am sorry, Senator Stoney. Senator Stoney.

SENATOR STONEY: Is it correct that I have time to make a motion to advance this bill?

SPEAKER MARVEL: There is another motion on the desk, or on the bill. Which? Okay, on the bill.

SENATOR STONEY: What is the motion?

CLERK: It would be to indefinitely postpone the bill and it is offered by Senator Chambers.

SENATOR STONEY: Well, let's take it up.

SPEAKER MARVEL: Okay, there are three minutes left for the bill.

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone LB 809.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I don't know what the rule is when you have a situation where the time is running out. If I would get to give my full presentation, or just the amount of time left on the bill, whatever the Chair would say, that is what I will do.

SPEAKER MARVEL: Well, you....the Chair is giving you three minutes. This is according....Senator Chambers, this has to do with the particular bill that we are going through at the moment which is....

SENATOR CHAMBERS: 809.

SPEAKER MARVEL: The consent calendar on the first agenda page.

SENATOR CHAMBERS: Okay, now what happens after my three minutes?

SPEAKER MARVEL: What happens after.....

SENATOR CHAMBERS: We vote on the motion that I am making? Or what?

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SPEAKER MARVEL: The rules as we understand them are at the end of in this case three minutes, that is the end of the bill, that is the end of the discussion.

SENATOR CHAMBERS: So then we don't necessarily get a vote on the motion anyway.

SPEAKER MARVEL: That's right.

SENATOR CHAMBERS: Tell me when I have 30 seconds, Mr. Chairman. I will do anything I can within the rules of the Legislature to stop these kinds of bills. A lot of times the Legislature and members of the Legislature will do things that are misleading to the public, then an attempt is to soft-pedal the very thing that supposedly is being done. And I think Senator Stoney has made it clear that he wants a mandatory 24-hour sentence. Senator Hefner, who just got through talking and said that his committee heard the bill, said, there doesn't have to be any sentence at all, that there can just be a fine. So if you find that judges are putting these children on probation anyway and you still allow that loophole, what do you do by passing a sham like this? If you believe in the mandatory sentence, say it forthrightly like Senator Stoney did. I know what he is trying to do, and that is what I am opposed to. But I am also opposed to the legislative strategy which is developing maybe by those who have to run for reelection or are seeking higher office to give the impression that they are doing something which, as a matter of fact, they are not doing at all. I am going to take Senator Hefner at his word and say that a fine can be levied. So I guess if a child has some means and his or her parents can up the money, that child pays a fine and is out. If on the other hand a child does not have the means and his or her parents do not have the means, that child serves 24 hours in jail. So again we are dealing with a type of class legislation based on the income standing of the one who is accused. If the Legislature establishes crimes and punishments, the punishments should not be established with the idea in view that certain people based on whose child they are or what kind of means they have, will be exempt from the truly harsh parts of the penalty. So the bill is not good on any count. As a mandatory sentence, I am opposed to it. Mr.....yes, is the time up? Mr. Chairman, I don't want to go over the three minutes. If the time is up, I will stop. I have twenty seconds, so what I will say is that if anybody who is going to have a birthday between now and Monday when we come back, I would like to wish you a happy birthday, many happy returns of the day. Thank you.

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LB 126, 375, 525, 686, 809, 869

SPEAKER MARVEL: Underneath the south balcony as guests of Senator Richard Peterson from Pierce, Nebraska, Mr. and Mrs. Bill Stanacek and daughter, Shannon, and Sue Wickman and Elisa Sorano who is an exchange student from Mexico. If you are in the room, will you please hold up your hands so we can see where you are. Yes.

CLERK: Mr. President, the Government Committee would like to hold an Executive Session underneath the north balcony upon adjournment today. That is the Government Committee. Senator Beyer would like to print amendments to LB 686 in the Legislative Journal. (See pages 1024 and 1025 of the Legislative Journal.) Mr. President, Senator DeCamp offers explanation of vote. And your Enrolling Clerk has presented to the Governor for his approval LBs 375, 525 and 126.

SPEAKER MARVEL: The next item is 869.

CLERK: Mr. President, LB 869 offered by Senator Stoney. (Read title.) The bill was read on January 18, referred to Miscellaneous Subjects, advanced to General File. I have no amendments on the bill, Mr. President.

SENATOR STONEY: Mr. President and members of the Legislature, I can spare you my speech if Senator Chambers would agree to spare you his, and maybe we could do something with this bill. He says, oh, no. Well, that doesn't surprise me. Ladies and gentlemen, what LB 869 attempts to do where LB 809 attempted to deal with the youth that would use altered identification in purchasing alcoholic beverages, in the case of LB 869 it addresses that person that provides through manufacture or production of this identification this illegitimate identification to youth. Now it is my understanding even here at the Nebraska State Fair there are youth who can through paying a certain fee purchase an identification that would verify that they are of legal age. What this bill would do as the other one would is to establish a minimum. There is no minimum at the present time. It is a Class III misdemeanor as it was in the instance referred to in LB 809. This would establish for a first offense a person that would be charged and convicted of this offense a 24 hours in jail, a \$100 fine. A subsequent offense and conviction would result in 48 hours or a \$500 fine. Ladies and gentlemen, this...well, I will leave it at that. I move that the bill be advanced.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature,

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LR 244
LB 458, 520, 568, 605, 892,
629, 714, 799, 809, 817, 852

allowed to us by law. I move the advancement of 817.

SENATOR CLARK: The question before the House is the advancement of 817 to E & R. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Have you all voted on the advancement of the bill? Have you all voted, one more time. Record the vote.

CLERK: Mr. President, Senator Cullan requesting record vote. (Read the record vote as found on pages 1049 and 1050 of the Legislative Journal.) 26 ayes, 15 nays, Mr. President.

SENATOR CLARK: The bill is advanced. The next bill is 852. The Clerk wants to read some things in.

CLERK: Mr. President, a series of items to read in. New resolution, LR 244 offered by Senator Chambers. (Read LR 244 as found on page 1050 of the Legislative Journal.) That will be laid over, Mr. President. Mr. President, Senator Fenger would like to print amendments to LB 714; Senator Vard Johnson to print amendments to LB 520; Senator Koch to 629; Senator Koch to 892; Senator Koch to 799; Senator Koch to 605; Senator Haberman to 568; Senator Fowler to 458; Senator Stoney to 809. (See pages 1051 through 1055 of the Legislative Journal.)

Mr. President, LB 852 was a bill introduced by the Public Works Committee and signed by its members. (Read title.) The bill was read on January 18th of this year. It was referred to Public Works for hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending. In addition, I have an amendment to the committee amendments that is offered by Senator Kremer that is found on page 717 of the Legislative Journal.

SENATOR CLARK: Senator Kremer on the committee amendments.

SENATOR KREMER: Thank you, Mr. Chairman and members of the Legislature, I think I should first of all very briefly explain the bill and then you will understand the amendments. This is a bill submitted by the Public Works Committee and brought to us by the rural power people that would provide for joint financing simply because financing as in the past is being discouraged. The need for electrical energy in the rural areas continues to increase greatly and