

January 18, 1982

LR 199

LB 473, 550, 738, 853-873

on the resolution. I will not support the resolution as it is now, and I am sure that the people I represent will understand. Thank you.

PRESIDENT: All right, seeing nothing further, that is the closing on the resolution as amended. All those in favor of adopting LR 199 as amended vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 32 ayes, 3 nays, Mr. President, on adoption of the amended resolution.

PRESIDENT: The motion carries. LR 199 is adopted. Let me first of all introduce some very special friends of Senator Kremer over here under the north balcony, Mr. and Mrs. Dennis Eberspacher. Would they stand up and be recognized, and welcome to the Eberspachers to the Unicameral. All right, Senator Kahle, thank you. The Call is raised. Read some matters in, Mr. Clerk, if you will.

CLERK: Mr. President, your committee on Public Works whose Chairman is Senator Kremer reports LB 473 as indefinitely postponed and LB 550 as indefinitely postponed. Both signed by Senator Kremer as Chair.

Senator DeCamp would like to print amendments to LB 738 in the Journal, Mr. President. (See pages 320 and 321 of the Journal).

Mr. President, I have a report from the Agriculture and Environment Committee reporting on confirmation hearing. (See page 321 of the Journal).

Mr. President, new bills. LB 853 offered by Senator Fowler. (Read title). LB 854 by Senator Fowler. (Read title). LB 855 offered by Senator Fowler. (Read title). LB 856 offered by Senator Fowler. (Read title). LB 857 offered by Senator Fowler. (Read title). LB 858 by Senator Marsh. (Read title). LB 859 by Senator Marsh. (Read title). LB 860 offered by Senator Nichol. (Read title). LB 861 by Senator Nichol. (Read title). LB 862 offered by Senator Beutler. (Read title). LB 863 by Senator Landis. (Read title). LB 864 offered by Senator Hefner and Howard Peterson. (Read title). LB 865 by Senator Goodrich. (Read title). LB 866 by Senator Goodrich. (Read title). LB 867 by Senator Goodrich. (Read title). LB 868 by Senator Fender. (Read title). LB 869 by Senator Stoney. (Read title). LB 870 by Senator Stoney. (Read title). LB 871 by the Government Committee. (Read title). LB 872 by Senator Wiitala. (Read title). LB 873

February 22, 1982

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.)

March 5, 1982

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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LB 869

again this is a bill that attempts to impose a minimum sentence but we can deal with it differently than the other because it has come out in the discussion as is written in this bill and in the other that there is the alternative of a fine. So either you are going to fine the people or you are going to jail them. So I would like to ask Senator Stoney a question. And, Senator Stoney, I am not going to put a kill motion on this bill. What are you interested in doing, have the person jailed for a mandatory 24-hour period, or have the person fined?

SENATOR STONEY: Senator Chambers, the way the bill is written it provides discretion to that judge. It would be for the judge to come to a determination as to whether or not he or she wished to fine that individual or to imprison them. So that is the reason that the latitude has been granted in the provisions of 869.

SENATOR CHAMBERS: Suppose then that we just strike the provision that relates to the mandatory jail sentence, and just leave it a fine.

SENATOR STONEY: Well, once again I don't think it provides the discretion as it does presently. It gives the judge with the facts that are given the opportunity if he feels in the instance of this person that it might be more beneficial for them to spend 24 hours in jail to think about this activity, then I think the judge should have that discretion and be able to mete out such a penalty.

SENATOR CHAMBERS: Thank you. Members of the Legislature, if there is a market in the production of these items, then the way to deal with that problem because you are dealing with the supplier now, is to hit him or her in the pocket with a substantial enough fine to cut into the profits. If jail would be a deterrent, it might be for a very young person who could be thrown in with cutthroats who would intimidate, threaten and maybe do things physically to that child. You might use the jails as a punishment in and of itself for those who are very young. But if the cost of doing business might be 24 hours in jail, perhaps a supplier would be willing to undergo that cost. And the way that is done is to have a shield or a front who will be in the position if arrest is made to serve the 24 hours in jail, and the one you are really after does not spend any time in the jail and the fine is not really that much. So what I think you ought to do if you want to get at those who are supplying this type of identification, is to put a fine which is large enough to make it not profitable to

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LB 869

do these types of things. And because this bill does have possibilities even though in the form that Senator Stoney has it, I can't agree with it. I am not going to hinder the movement of this bill at this time because I think there are enough people here today who would advance this bill because they will perceive it as locking them up and throwing away the key. So for whatever reason you have for putting your shoulder to this wagon and pushing it across the line, it doesn't matter to me. But when the thing gets on Select File, I am going to have some amendments that I am going to offer to it.

SPEAKER MARVEL: Senator Pirsch. The question has been called for. Do I see five hands? I see five hands. All those in favor of ceasing debate vote aye. Opposed vote no. Record.

CLERK: 28 ayes, 1 nay to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. Senator Stoney, do you wish to close on your motion?

SENATOR STONEY: How much time?

SPEAKER MARVEL: Ten minutes.

SENATOR STONEY: It won't take me ten minutes.

SPEAKER MARVEL: Is it nine or ten? Nine minutes.

SENATOR STONEY: Mr. President and members of the Legislature, I have an appreciation for what Senator Chambers says, and perhaps LB 869 is not the proposal that will eliminate the problem that we have here in our state. But I assure you it is an honest attempt on my part to attempt to deal with it. Perhaps these people that manufacture these identification for youth do not consider the seriousness of such an activity and as Senator Chambers mentioned in his remarks relative to LB 809, perhaps these young people try to emulate older folks that from what we have seen in our society and the problems that it has caused for people my age and older, I don't think that it is frivolous for us to attempt to address an issue where youth is involved to maybe eliminate the problem for them that we of an older generation have experienced. So it is an honest attempt on my part to let these people know that the Legislature is serious about this issue, it is a tremendous societal problem, and that we are going to attempt to deal with it effectively. Again, it is not the panacea, but I do believe that it would be a step in the right direction

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LB 593, 697, 869

in letting them know that should they conduct themselves in such a way that they participate in this activity, the exposure to a fine or to imprisonment is eminent. I would move that LB 869 be advanced to E & R Initial.

SPEAKER MARVEL: The motion is that the bill be advanced as per Senator Stoney's comments. All those in favor vote aye, opposed vote no. Okay, record the vote.

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

SPEAKER MARVEL: Okay, the next bill, 593.

CLERK: Mr. President, LB 593 offered by Senator Remmers and Richard Peterson. (Read title.) The bill was read on January 6. It was referred to the Ag and Environment Committee for hearing. The bill was advanced to General File, Mr. President. I have no amendments. I do have a motion from Senator Wesely to the bill, Mr. President.

SPEAKER MARVEL: Senator Peterson.

SENATOR R. PETERSON: Yes, Mr. Speaker, fellow colleagues, 593 is a bill that has been incorporated into 547 now which is really 547, and....on Final Reading. So I ask unanimous consent to pass over 593.

SPEAKER MARVEL: No objection, so ordered. We will go on to the next bill.

CLERK: Mr. President, LB 697 offered by Senator Lamb. (Read title.) The bill was read on January 7. It was referred to the Ag and Environment Committee for hearing. The bill was advanced to General File, Mr. President. I have no amendments on the bill.

SPEAKER MARVEL: Senator Lamb, do you wish to explain your bill?

SENATOR LAMB: Yes. Thank you, Mr. President. LB 697 eliminates an ambiguity in the weed control statutes. It makes sure that the hearings that are held when you disobey the weed control laws are held in the county rather than in Lincoln. I think that is the way it is being done now in most cases. Some people are uneasy that that might not always be the case so this clarifies that part of the statute so that these hearings are, in fact, held in the county. I move that the bill be advanced.

LB 577, 579, 601, 605, 642, 644, 651, 662,  
677, 678, 696, 697, 718, 718, 719, 720,  
728, 729, 739, 743, 764, 767, 767A, 775,  
776, 778, 784, 792, 796, 807, 824, 825,  
828, 839, 845, 869, 877, 890, 892, 931,  
941, 951, 952, 961, 962

March 9, 1982

SPEAKER MARVEL PRESIDING

REV. MORRIS VENDEN: Prayer offered.

SPEAKER MARVEL: If I could have your attention for a moment before we proceed. The chairmen had a meeting today and it was agreed that we would attempt to control debate as we have not done too well in the last few months and that we would try, for instance, with 652 to have the debate and the vote on advancement after one hour and that we try to have the pros and the cons of these issues so it doesn't take forever to get the point across. This time we're in a position where we either try to limit debate or many of the other issues will simply go down the drain. So the Chair would appreciate, the chairmen would appreciate your cooperation in trying to give people an opportunity on both sides and not spend all day in the discussion. Record.

CLERK: There is a quorum present, Mr. President. Yes, sir, I do have some items to read in. Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 579 and find the same correctly engrossed; 662 correctly engrossed; 677 correctly engrossed; 718 correctly engrossed; 719 correctly engrossed; 728, 729 correctly engrossed; 764 correctly engrossed and 778 correctly engrossed. (See page 1060 of the Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 720 and recommend that same be placed on Select File with amendments; 767 Select File with amendments; 767A Select File; 807 Select File with amendments; 941 Select File; 877 Select File; 577 Select File; 792 Select File; 605 Select File; 931 Select File with amendments; 796 Select File; 845 Select File; 644 Select File; 739 Select File; 696 Select File; 828 Select File; 642 Select File; 678 Select File; 775 Select File; 776 Select File; 951 Select File; 961 Select File; 952 Select File; 784 Select File; 651 Select File; 716 Select File with amendments; 743 Select File; 601 Select File; 869 Select File with amendments; 697 Select File; 825 Select File; 892 Select File; 962 Select File with amendments; 839 Select File and 890 Select File with amendments. Those are all signed by Senator Kilgarin as Chair, Mr. President. (See pages 1057-1059 of the Legislative Journal.)

Mr. President, I have a motion from Senator Labeledz to place LB 824 on General File pursuant to Rule 3, Section 18(b). That will be laid over pursuant to our rules, Mr. President.

SPEAKER MARVEL: Okay, we go to item #4 and we're talking about LB 924 and I would caution you to do your best to get

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LB 869

SENATOR STONEY: I would move the E & R amendment to LB 869.

PRESIDENT: Motion is to adopt the E & R amendment on LB 869. All those in favor signify by saying aye, opposed nay. The E & R amendments are adopted. Anything further, Mr. Clerk?

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone the bill. That would lay it over unless Senator Stoney wishes to take it up at this time.

PRESIDENT: There is a motion to indefinitely postpone by Senator Chambers. Senator Stoney, what do you wish to do?

SENATOR STONEY: Let's take it up.

PRESIDENT: All right you want to take it up. Senator Chambers, you may proceed with your motion to indefinitely postpone LB 869.

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, this is a companion bill of one that Senator Stoney had dealing with false identification used by people or which may be used by minors to obtain liquor illegally. I didn't try to stop the bill on General File because I thought there might have been merit to it but I misread it on General File. I read it hastily and I missed some of the factors in it that make me feel that the bill can not be amended to take care of the objections that I have while being in a form that would accomplish what Senator Stoney wants. If you will follow with me on this bill you will see very clearly the points that I am making, whether you agree with them or not is a different point. All of the material that I will be dealing with is found on page 3 of the green sheet. If you start at line six where the new language begins, it says, "any person who knowingly" and I'm going to read it in the way it bothers me, "any person who knowingly alters any form of identification for the purpose of sale or delivery to a person under the age of twenty years." Now first of all when you say, "any person" it could mean a minor, one kid doing something for another. When that is done or if that is done the person must be, if found guilty, sentenced to twenty-four hours in jail or a hundred dollar fine or both. Forgetting that this would allow those with money to get out of going to jail and the ones without money to have to serve the time look at the type of classification that we have here. It is a proposition that could deal with minors in the same way it would deal with a company if such a thing could be envisioned that was engaged in this type of activity. The bill is not aimed at trying



to stop all fraudulent identification but only that which would be delivered to somebody under the age of twenty and ~~old~~ for the purpose of trying to obtain alcoholic beverages. So if fraudulent identification were presented to another person who was older than 20, no problem. If it is to be used for a purpose other than obtaining alcoholic beverage, no problem. But here is an additional difficulty with it. The person would alter it for the purpose of delivery or sale. The law does not require an actual delivery nor an actual sale. A person could be found with this piece of identification and brought under a charge simply for having it ~~and then~~ an effort could be made to prove what that person's purpose in having altered it was. I think that is too vague and too open-ended for a criminal statute which is what we are dealing with. Then if you go to line nine you see where it mentions the part about the person under 20 years of age. I mention that for the sake of the record. Now if we go down to lines 23 through 26 we have a definition, form of identification is defined as "any card, paper or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquors." Now it doesn't say again that the identification must be used for that purpose. It doesn't have to actually be used for the problem to come into existence. Having it for that purpose is the form of identification which is being made illegal. But, how do you determine whether it is for that purpose, if it may be so used? By using this kind of language you are leaving it up to the discretion of whoever would look at this piece of identification. If you have a thousand people 999 of them would look at this piece of identification and say, that wouldn't fool me at all. It could be something written on a paper sack or it could be a baptismal certificate or a purported highschool diploma or any piece of paper or any card. If the person has it and it may be used for establishing age, then the problem has been brought into existence. I don't even see the use of the word "reasonable" anywhere in this statute that the identification would cause a reasonable person to believe that it is what it purports to be. But, even if you would have that term reasonable I don't think that would save the bill because the definition is too vague, it is too open-ended, and it leaves a determination of whether an offense has been committed or can be committed to the intelligence level of whoever may have had this purported piece of identification presented to him or her. Now, I say again, the penalty is mandatory, for first offense there is a minimum mandatory sentence of twenty-four hours in jail or a hundred dollar

fine or both. For a second or any subsequent offense the fine is five hundred dollars and a minimum of forty-eight hours in jail, those are minimums. The thing that troubles me is again we are talking about the problem of young people obtaining alcohol. So, they are being handled, I feel in a way, that is very harsh under a statute which is very vague. I think it is not wise public policy and again it is a part of the scatter-gun approach to a very serious and complex problem. You might wind up putting some young people in jail, but I don't think that will have touched the problem to any extent or degree at all. In summing up, let me say briefly again what my objections are. Any person who would alter any piece of paper which somebody may try to use to establish their age for the purpose of obtaining liquor, if they are minors, has run afoul with this law. Only those persons under age 20 could be the recipients of this false identification before the law would be broken. The only time this false identification would be against the law was if it is to be used for the purpose of obtaining alcoholic beverages. I think it is far too vague, I'm against the mandatory sentence, and remember, the purpose is what is being punished here, not the actual delivery, not the actual sale, not the actual use. If somebody alters any kind of piece of paper or card with the purpose established in this bill, even though it never leaves that person's possession, the offense has been committed and the mandatory penalties must be imposed. Again I think it is one of those unenforceable bills. It ought not be put on the books because it could be used with a vengeance to harass if that should be a prosecutors desire. I think the bill ought to be indefinitely postponed. The reason I held up making the motion on General File, as I said, I misread the bill. I thought it was dealing with firms or companies or organizations that might do this kind of thing. But it is much broader than that and it is much too vague in its terms even if it was dealing with an organized effort.

PRESIDENT: Chair recognizes Senator Stoney.

SENATOR STONEY: Mr. President, members of the Legislature, Senator Chambers this year seems to be my nemesis. Every bill that I have had he has appropriately attempted to kill. Let me explain what LB 869 is and let me preface my remarks by saying that Senator Chambers is very astute in taking any proposition and very carefully, as an attorney, picking that proposition apart. That is what he has done in explaining his reasons for wishing to kill this proposal. I compliment him for that. But ladies and gentlemen, what this

bill attempts to do is to address a problem that we have here in our state with youth, and I'm talking about minors under legal age to drink, who have at their access, through purchase, illegitimate identifications. They use this to purchase alcoholic beverages. Now it is my understanding that each year at the Nebraska State Fair we have individuals that sell this type of identification. They charge a rather substantial amount to young people who are willing to pay this of course to have the identification that would verify them to be of legal age. Additionally Senator Chambers was concerned about the minors that might be involved in this process, not an adult corporation who were manufacturing these identifications but, as he stated, "one kid doing for another". Ladies and gentlemen, I would just say that if a youth who is in the process of providing these to others of his age would participate in this act then I guess I have no empathy for that person who wants to act as an adult. I feel if they choose to act as an adult and be in violation of the law, then they should be treated as an adult. Unfortunately I think in the permissive society in which we live we have had a tendency to look the other way in instances such as this. I think that is one of the reasons we have created the problem that we have. He also mentioned that there was some difficulty he felt with the wording that dealt with the purposes of manufacturing this. Well we know what the purpose is and we know that the only time it would be effective is if the individual takes this phony identification and attempts to purchase alcoholic beverages. Now I don't think I need to explain to you, if you have family, friends or constituents who have visited with you about this problem to know what seriousness we face in society today with youth who are attempting to become adults and in doing this many of them beginning consuming alcoholic beverages which translates to a problem in subsequent life or in later life. So, ladies and gentlemen, all the intent is is to stop those who manufacture this identification. I think it will help. I know very frankly that it will be a deterrent to any youth that Senator Chambers is concerned about that are manufacturing these, because I think if they were fearful of having to possibly be jailed for 24 hours or having to pay a fine, call their parents to help them in paying this fine, that it would not be a problem. I'm sure that it will be a deterrent and I think that it will be helpful to law enforcement people who are plagued by this problem, it will be helpful to the liquor commission who has to attempt to enforce this, and it will be very, very helpful to those who have legal liquor establishments who attempt to maintain their license and to conduct themselves in a way that these license would not be placed in jeopardy. This is not the answer to the problem but I think it is a practical solution and one that we should adopt.

PRESIDENT: Any further discussion on the motion to indefinitely postpone? Senator Chambers, do you wish to close.

SENATOR CHAMBERS: Very briefly, Mr. Chairman. Remember this bill does not limit itself to the purchase or the sale of these items, but merely the altering and I'm putting it in the simplest form that the bill allows. If anybody alters a piece of paper, for anybody under twenty, because that person may have the purpose of using it to obtain liquor the offense is committed. That is all. It doesn't have to be at the fair, it doesn't have to be an organization, no liquor need be purchased, no attempt be made, need be made to purchase the liquor and the person need not even deliver the altered piece of paper to anybody. I think that is far too broad. Then when you come down to the definition of the form of identification because that is what we have labeled this document, it says, the document that may be used to establish the age. When you say "may be used" it means that you have a set of circumstances where an attempt is going to be made to use this to persuade somebody that your age is whatever this paper says. Now, if it is so unreasonable to any person that this piece of paper being brought by this person is what it purports to be then I think it is something that should be laughed off. You shouldn't allow a crime to be committed under these circumstances. I can remember an incident that occurred where a politician or somebody for promotional purposes had produced a replica of some denomination of US currency. He had put his name on it, he had put his face on it, he had said this is not money, this is phony and things like that. The Treasury Department got one of these bills and tried to prosecute the person. The judge immediately threw the thing out saying anybody looking at this would know that it is not an attempt to duplicate the currency of the United States. It is a piece of paper, it declares clearly on its face what it is. Anybody looking at it can see what it is not. So, this bill does not even require a standard of reasonableness. It does not even say altering a piece of paper so that a reasonable person observing this could be lead to believe that it is what it purports to be. It could mean that a person would take a birth certificate and take some of that white out that we have in the Legislature and white out the date of birth and write in with pencil, an obvious alteration. The mere doing of that could be the basis of a prosecution under this act and I think that is unreasonable, the intent that Senator Stoney has is not what I am even quarreling with. I have to be concerned about the conduct we define as crimes and the punishments that we impose. This is one of those that does not set well with my conscience, with

my legal training or with my common sense, and we should remember always, that liquor has been held up to the young people as a desirable substance. The second thing Senator Stoney said that if a child is going to behave as an adult treat that child like an adult or minor. We have a whole juvenile court system which flies in the face of that philosophy. It might be convenient, it might be self-satisfying if you want to punish somebody to say that you make no distinctions based on age, understanding, education or background or the circumstances that may have brought a person into a particular set of situations. What this law in America is supposed to do is look at each individual as an individual. That doesn't mean that you excuse people of culpable conduct but you look at the circumstances involved and although the act itself may be the same, in essence it is a different act because you look at the intention, there may be provocation. . .

PRESIDENT: One minute, Senator Chambers.

SENATOR CHAMBERS: . . .there could be all kinds of mitigating circumstances. So although we look at the same object we see something different and it goes like this and I guess it is the way ever defendant ought to be looked at. If you look up and I look down upon the tallest man in town, you see his knees and his feet and toes. I see his head and ears and nose. Though it is one man we see, you swear it is A and I swear it is B. The court has to make, take into consideration differing circumstances. This bill for a multitude of reasons in addition to the ones that I have given is not wise public policy. For those reasons, I am asking that it be indefinitely postponed.

PRESIDENT: The question then is the motion to indefinitely postpone LB 869. All those in favor vote aye, opposed vote nay. Everything on Select File requires 25 votes to indefinitely postpone at this stage. Seven are excused, Senator Chambers, so you know where we are. Have you all voted? Senator Chambers, what do you want to do? Senator Chambers. All right, we will have a record vote. Record the vote and a record vote has been requested so a record vote.

CLERK: 7 ayes, 21 nays, 14 present and not voting, 7 excused and not voting. (Vote appears on page 1321 of the Legislative Journal.)

PRESIDENT: Motion fails. Do we have any other motions on the bill?

CLERK: Nothing further on the bill, Mr. President.

PRESIDENT: All right, Senator Stoney, do you want to move the bill? Motion by Senator Stoney to advance LB 869 to E & R for Engrossment. All those in favor signify by saying aye, . . . Senator Chambers, yes. All right, Senator Chambers. I didn't see your light.

SENATOR CHAMBERS: That's all right, I understand. I'll be very brief. Remember this. The person who has got the money pays and is home free. The fine can be a cost of doing business. The one who has no money goes to jail. It is an absolutely poor and unfair policy decision but you choose to make it. The record on this issue as others will be the only vindication that I have. But I think a point will have to be reached at some time when this Legislature will look at what it is doing. It would be good if you can read some of the debate of the Continental Congress when they were putting together a Constitution, talking about the Bill of Rights, crimes and punishments. The necessity of being careful in defining all types of conduct as criminal and imposing all types of ill-considered penalties. These kind of things do look good to the public but we understand better what is involved in the enforcement of laws. We also know that if the law is not desirable and if it is an unwise public policy, a prosecutor who has obviously a better grasp of the law and apparently greater concern about justice than the Legislature simply will not bring charges under this bill. Or maybe what the prosecutor will do is decide that it is a bill that ought to be imposed only on those who have money so he will find out first what means this individual has. If he or she can pay a fine, then he or she will be prosecuted. They will pay the fine, they will go out and they will sell more of these items and the fine will be the cost of doing business. I don't think this bill will come anywhere close to solving the problem that it aims at, but I think it creates a misapprehension or a misconception in the minds of the public that something has been done that deals with the consumption of alcohol by minors and it has not. It has not. The problem is ten feet above the ground, the Legislature is burrowing ten feet below the ground and we'll tell the public we did something. We did not address the problem, but we did something and that you ought to accept. I will not vote for the advancement of the bill and I hope that it will not get enough votes to advance.

PRESIDENT: Okay, and you asked for a board vote. All right, a machine vote has been requested. The motion then is the advance of LB 869 to E & R for Engrossment.

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LB 869, 825

All those in favor vote aye, opposed vote nay. Have you all voted? Senator Stoney, we are. . .

SENATOR STONEY: Mr. President, how many excused?

PRESIDENT: Seven.

SENATOR STONEY: Nineteen take away seven would be twelve.

PRESIDENT: There are a few around here yet.

SENATOR STONEY: I wonder if John DeCamp has voted yet? Unfortunately he has.

PRESIDENT: Well you want to . . .

SENATOR STONEY: I hate to do it but we have to have a Call of the House.

PRESIDENT: Do you want to move to Call the House? Record what's on the board. We have a motion for a Call of the House. All those in favor of a Call of the House vote aye, opposed vote nay. You'll accept call ins, I presume. Record the vote.

CLERK: 22 ayes, 0 nays to go under Call.

PRESIDENT: The House is under Call. Again the Sergeant at Arms will bring those in that are not here and all of you will please register your presence. We will accept call ins. Senator Stoney said he would accept call ins. We are taking call in votes and the question is the advance of LB 869 to E & R for Engrossment.

CLERK: Senator Carsten voting yes.

PRESIDENT: All right, record the vote.

CLERK: 25 ayes, 8 nays, Mr. President.

PRESIDENT: Motion carries, LB 869 is advanced to E & R for Engrossment. Now, Senator Lamb, do you want to take up one more bill? We had better just hold everybody here. Please don't raise the Call because let's not have this have to happen again. The next bill is LB 825, but, Senator Beutler, correct me, I believe that you said you would pass that one over since there is a motion to indefinitely postpone on it anyway and you don't want to take it up.

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LB 208, 573, 633, 668, 693,  
739, 751, 766, 790, 816,  
869, 875, 892, 952

Would they also be recognized and welcome to your Nebraska Legislature to you. Yes, the Clerk will now, before we commence Final Reading, read some matters in.

CLERK: Mr. President, Senator DeCamp would like to print amendments to LB 816; Senator Carsten to 693. (See pages 1368-1369 of the Legislative Journal.)

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 573 and find the same correctly engrossed; 633, 668, 739, 751, 766, 790, 869, 875, 892 and 952 all correctly engrossed.

PRESIDENT: All right, we're ready then if all the members are at your desks, we're still on Final Reading. Mr. Clerk, will you commence on Final Reading, LB 208.

CLERK: (Read LB 208 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 208 pass. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Read record vote as found on page 1370 of the Legislative Journal.) 30 ayes, 17 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 208 passes. The next bill on Final Reading, Mr. Clerk, is LB 383.

ASSISTANT CLERK: (Read LB 383 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 383 pass. All those in favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read record vote as found on page 1371 of the Legislative Journal.) The vote is 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 383 passes. Before we go to the next bill, I notice that we have some rolls being passed out. If you want to know what that is for, why we'll have to all recognize Senator Howard Peterson's birthday. It was March 22, Howard, and we say "happy birthday" to you and join in. Happy birthday, Howard. The next bill on Final Reading while you're celebrating Senator Peterson's birthday is LB 421.

ASSISTANT CLERK: (Read LB 421 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure hav-



March 31, 1982

LB 852, 869

with the emergency clause attached. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 1517-1518 of the Legislative Journal.) (28 ayes, 18 nays, 3 excused and not voting.)

PRESIDENT: LB 852 passes with the emergency clause attached. The next bill on Final Reading, Mr. Clerk, is LB 869.

CLERK: Mr. President, I have a motion on the desk.

PRESIDENT: Read the motion, Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to return LB 869 to Select File for a specific amendment, that amendment bring to strike the enacting clause.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I sought an Attorney General's opinion on this bill because I do think it is overbroad in its reach and if you will turn to pages 1462 through 1464 of the Journal you will be able to see some of the comments that the Attorney General wrote which I will refer to. Now his conclusion is that the bill probably can withstand constitutional challenge. In other words in the opinion of the Attorney General's office there is no serious constitutional problem with the vagueness or broadness found in this bill. I disagree with that opinion but, nevertheless, I wanted to get that out of the way first. His concluding paragraph is this and it is found on page 1464. "While we question the necessity of proscribing such a wide range of conduct, we leave that decision to the best judgment of the Legislature and are of the opinion that if this provision is enacted, it most likely would be upheld as being constitutional." Now in the paragraph above that the last sentence in the next to the last paragraph says, "we question in passing whether its authors intended such broad application." Some of the questions I raised in my letter to the Attorney General I talked to you about on the floor. One of them dealt with the age or the youth of the individual who could be prosecuted under this act for altering any form of identification and the Attorney General did agree that because of the language of this bill there is no limitation as to age. It could be anybody no matter how young so long as they could form the requisite intent to alter this identification. So you are not just dealing with adults. You're not even dealing with those who are in their upper teens. You're dealing with kids who could just be

Juveniles and I know some people say that if somebody, no matter how young, does this, there ought to be a punishment that would attach to them. I disagree with that. So no matter how young, this act could come into play. In the second paragraph on page 1463 you will find these words. "You also ask whether or not this section, as written, would create a crime regardless of whether or not there was actual delivery or sale of this form of identification. We would be of the opinion that a violation of this section would occur at the time any person manufactured, created or altered any form of identification that the elements of the crime would exist in the absence of actual sale or delivery of the document." So if the creation of the document is for the purpose of substantiating the age of the minor and the minor would intend to use it to purchase alcohol there need not be any delivery of this document to any minor. The document need not be sold to any minor. As soon as somebody manufactures or alters something that could be used as identification, the crime, the elements of the crime are present. And again, the Attorney General said that is not unconstitutional but it is very broad. And there is another thing. Regardless of whether or not the information contained on that document is accurate. In other words, a violation of this section would not depend upon the document containing false information. So the document could reflect the actual age of the minor and the minor could go in with a document reflecting his or her age accurately but, nevertheless, a crime has been committed because somebody manufactured it for the purpose of this person using it to obtain alcoholic beverages. The last paragraph on page 1463 starts with these words. "While it occurs to us that this prohibition could have been more carefully drafted, we do not believe that its prohibitions would be violative of due process standards as being too broad or too vague." After you get past the issue of constitutionality there is a very important question for the Legislature that relates to policy. Is it good policy to enact a bill like this which the Attorney General acknowledges is not drafted as well as it could have been, that it is extremely broad, that it makes a crime out of the production of a piece of paper that could be used for identification even if the information on the piece of paper is accurate, even if there is nothing false in it? For producing a document which states the truth, a crime can be committed. I'm not in favor of a policy like that. The Legislature may be but, nevertheless, there is on record in the Journal an explanation by the Attorney General's office of how broad this bill is, what it does, the extremely young people who can be brought under its provisions and if that is what the Legislature wants to do, clearly it will do so. But I wanted to do everything I could to put into the record, and the Journal is the official record of the Legislature's proceedings,

a clear itemization of the objections I have to this bill that I think the Legislature ought to concern itself with. I will read one more passage from 1464. It would be the second full paragraph. "Here again we note in passing that this section would render illegal, the manufacture or creation of any form of identification regardless of its accuracy, if the purpose of the manufacture or creation of this document was for the sale or delivery to a minor and if this document could be used to substantiate the age of an individual, such substantiation being necessary to the purchase of alcoholic liquors." So the one who manufactures it doesn't have to intend that it be used for the purchase of liquor, the manufacture is for a minor. Then the minor may decide to use it for the purchase of liquor and since it could be used for that purpose, whoever produced that documentation is guilty of a crime. I think that is very poor and in my closing I have one more portion of the Attorney General's letter that I want to read but because if you continue to read from a document and the attention span may not be too long on Final Reading, I don't want to try to do it all at this point. But what I want to say is this, in justification of my motion to kill this bill. The problem which is being aimed at will be missed by this bill but it will create a broad catchall that can serve as a basis for rendering ordinarily harmless conduct criminal. If a kid wanted to get something to use to go see a dirty movie and the age of that individual has to be eighteen or whatever it is to get in those movies, somebody could just argue, well it could also be used to substantiate age to get liquor even though anybody to whom it is presented know that you can't buy liquor when you are eighteen. I don't think you can. So if it could be used to get liquor too or substantiate age for that purpose, the crime is committed. I think it is a very poorly drafted bill. I think that happens because the problem that is being grappled with is difficult to attack in the way that this bill attempts to attack it but, nevertheless, I am asking that you return this bill so that the enacting clause may be stricken.

PRESIDENT: The Chair recognizes Senator Stoney.

SENATOR STONEY: Mr. President, members of the Legislature, I rise in opposition to Senator Chambers' motion to return this bill. As you will recall this bill has survived a rather torturous path thus far. Senator Chambers on each occasion of debate has opposed this proposition. His opposition was not as strong when it was considered on General File as it was on Select File and you will recall at that time he offered a motion to kill the bill which was unsuccessful and he is attempting to do the same at this stage of Final

Reading. I respect and admire Senator Chambers' opinion on this particular issue, although our philosophies are in conflict, and I won't take the time to belabor the points that he has made in his opening remarks. If anyone has an expressed interest in what the Attorney General has said relative to his opinion, in each and every instance to the questions posed by Senator Chambers, the Attorney General unequivocally has indicated that there are no constitutional problems with this particular bill and closes that opinion by saying it would most likely be upheld as constitutional. Ladies and gentlemen, what we are attempting to do with this provision is very, very simple. There are individuals that do manufacture knowingly, intentionally illegitimate identification for people who are minors, not of legal age so that they can use these documents in the purchase of alcoholic beverages. Now we all know the seriousness of this problem in our society and I think that every step that we can take to withhold the possibility of an individual involving themselves in this process would be helpful and of great societal benefit and for that reason I would ask that you reject Senator Chambers' request that the bill be returned and that you support its passage into law. Thank you.

PRESIDENT: There is no further discussion, Senator Chambers. You may close on your motion to return.

SENATOR CHAMBERS: Mr. Chairman, I pointed out when I first began that the Attorney General said he saw no constitutional problem with the bill as it is drafted despite how broad it is but I also emphasize that there is a public policy question here, what the Legislature's responsibility is. It would not be unconstitutional for us to put into a bill that the cow jumped over the moon but whether that is wise is a decision that we have to make. Not everything which may be constitutionally done is a wise policy for the Legislature to enact. And this is the next to the last paragraph in the Attorney General's letter and I hope you will listen to it because nothing which is bad need be done. The identification in question need not be used to try to purchase liquor at a time when the person is too young to get it, so listen to the words that the Attorney General's office wrote. "This amendment would appear to render illegal the manufacture or creation of any identification document reflecting age for the purpose of selling or delivering such a document to a minor even though the purchasing minor might not intend to utilize this identifying document until they had reached their majority." So there need not be an attempt to use the identification for an illegal purpose. You don't even have to do that but if somebody manufactures or alters it, and don't just concentrate on the word manufacture. Remember, any piece of paper which could be used to reflect the age of a minor, any piece

of paper altered by anybody of any age, not a company, not a syndicate, anybody no matter how young for any purpose. If it could also be used by a minor to try to substantiate age for the purpose of purchasing liquor and even if nothing in the paper is false a crime can still be committed. Some people do not find that kind of thing objectionable. I do. You can put anything in the way of a prohibition into the statutes that you choose but you will find some of the very people who offer these kind of slipshod laws are the same ones who on another occasion will tell their constituents too many bills are introduced by the Legislature. There are too many laws on the books, a law for this, a law for that but then everytime something comes to their attention that they don't like they say there ought to be a law and they run it through even though it is as poorly drafted as this one. I have done all that I can to try to stop this piece of pernicious legislation from being put on the books. It is like saying that you have ten insects that you are dealing with, one of them is harmful, the other ninety-nine are neutral but in order...and they may do some good. In order to get at the one you create a spray that kills all of them. What Senator Stoney is aiming at is a very, very small percentage of the population. What he can hit is anybody in the population. So if any of you write anything on a piece of paper relative to the age of a minor and deliver to that minor, the minor need not use it to purchase alcohol. What you write need not be false but the fact that it was delivered to a minor and the minor could try to use it, the elements of the crime that you are creating here today are present. That is what you will get from the Attorney General's letter. If that is the way you believe in making law this bill will pass. If you have more care and caution about the creation of crimes and punishments my motion will be voted up.

PRESIDENT: The motion is the Chambers' motion to return LB 869, the purpose of his amendment to strike the enacting clause. All those in favor vote aye, opposed nay. I remind you we are on Final Reading. All members are to be at their desks. Have you all voted.

SENATOR CHAMBERS: ...I'd like a record vote.

PRESIDENT: All right, yes, Senator Chambers, you bet. Have you all voted? A record vote has been requested so... Record the vote.

CLERK: (Read record vote as found on pages 1518-1519 of the Legislative Journal.) 12 ayes, 24 nays, 3 excused and not voting, 10 present and not voting, Mr. President.

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LB 869, 875, 892, 952

PRESIDENT: The motion fails. Any other motions on LB 869?

CLERK: No, sir. Nothing further on the bill.

PRESIDENT: Proceed then with the Final Reading of LB 869, Mr. Clerk.

CLERK: (Read LB 869 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 869 pass. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 1519-1520 of the Legislative Journal.) 33 ayes, 11 nays, 3 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 869 passes. The next bill on Final Reading, Mr. Clerk, is LB 875.

CLERK: (Read LB 875 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 875 pass with the emergency clause attached. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on page 1520 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 875 passes with the emergency clause attached. The next bill on Final Reading, Mr. Clerk, is LB 892.

CLERK: (Read LB 892 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 892 pass with the emergency clause attached. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 1520-21 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 892 passes with the emergency clause attached. The final bill on Final Reading this morning is LB 952, Mr. Clerk.

CLERK: (Read LB 952 on Final Reading.)

April 1, 1982

LB 761, 790, 817, 852, 869  
875, 892, 751, 766, 807,  
573, 633, 668, 739,

SENATOR CLARK: The motion carried. Yes, Senator Warner.

SENATOR WARNER: Well, I was wondering if it was too late to change a vote.

SENATOR CLARK: Yes, it is now. He has announced the vote.

SENATOR WARNER: I was just going to vote no for purposes of reconsideration.

SENATOR CLARK: You did vote no, I think.

SENATOR WARNER: I mean yes so I could move.

CLERK: Mr. President, while we are waiting your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 807 and find the same correctly engrossed.

Mr. President, the bills read on Final Reading yesterday are now ready for your signature.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LBs 573, 633, 668, 739, 751, 766, 790, 817, 852, 869, 875 and 892. Did I hear somebody raise the Call? The motion is to raise the Call. The Call is raised.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Mr. Clerk.

CLERK: Mr. President, I have a motion. Senator Wesely would move to reconsider the vote just taken on adoption of Senator Koch's amendment.

SENATOR NICHOL: Senator Wesely.

SENATOR WESELY: Thank you, Mr. President. I would like to yield my time to Senator Warner. He didn't get much of a chance to discuss the situation with that amendment. Although I support the concept, I understand there is an alternative perhaps we ought to take a look at, and so I am asking you to reconsider that vote and I will yield the rest of my time to Senator Warner, please.

SENATOR WARNER: Thank you, Senator Wesely. Mr. President and members of the Legislature, if the body wishes to increase

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LB 875, 892, 893  
LB 127, 573, 633, 668, 739, 751,  
761, 766, 790, 816, 817, 852, 869

and nail him then and we can go on with the proceedings so that we can proceed with the business.. Would that be okay with you?

SENATOR HIGGINS: I don't know whether I want to vote to stay here or not because I don't know if it is going to do any good, because I don't know what might be on special order tomorrow and the next day.

SENATOR NICHOL: Well, I don't know that we are going to resolve that by debating that and I would really strongly suggest that we stick to the procedure that we are in right now. If you don't get a.....

SENATOR HIGGINS: I wish we would have stuck with the procedure we voted on two weeks ago.

SENATOR NICHOL: Let's get in our seats, please, so we can continue with the roll call vote and we will get going here. You have been very patient and I appreciate it but let's try to hang on there a little bit longer. Maybe we can get this bill passed or on its way. Proceed with the roll call, please. Please go to your seats.

CLERK: (Read the roll call vote as found on pages 1592 and 1593 of the Legislative Journal.) 23 ayes, 15 nays, Mr. President, on adoption of the amendment.

SENATOR NICHOL: The amendment is not adopted. Shall we move on to the next one, Pat? Do you want to read something in first?

CLERK: Very quickly, Mr. President. I have an Attorney General's Opinion addressed to Senator DeCamp, one to Senator Sieck and one addressed to Senator Warner. (See pages 1593 through 1597 regarding LBs 816, 127 and 893 in the Legislative Journal.)

Your Enrolling Clerk has presented to the Governor the bills that were read on Final Reading yesterday, Mr. President. (Regarding LBs 633, 790, 573, 668, 739, 751, 766, 817, 852, 869, 875 and 892.)

Mr. President, the next amendment I have is one offered by Senator Burrows.

SENATOR NICHOL: Senator Burrows.

SENATOR BURROWS: Mr. Chairman and members of the Legislature, this amendment simply strikes the language that



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SENATOR CLARK: The motion is to advance LB 488A. All those in favor say aye...all right, a machine vote has been requested...vote aye, those opposed vote nay.

CLERK: Senator Clark voting yes.

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

CLERK: Mr. President, Senator Cullan requests a record vote. (Read record vote as found on page 1633 of the Legislative Journal.) 18 ayes, 24 nays, Mr. President.

SENATOR CLARK: The bill does not advance. We will now take up LB 417A, LB 714A. The Clerk wants to read some things in.

CLERK: Mr. President, a communication from the Governor addressed to the Clerk. (Read re: LB 573, 668, 751, 817, 869 and 875.)

Your committee on Enrollment and Review reports LB 835A advanced to Select File and LB 953A advanced to Select File.

Mr. President, new resolutions, LR 304 offered by Senator Wagner. It commends the Ord Quiz on the occasion of its centennial for its past 100 years of service in the business of Journalism and that will be laid over. LR 305 by Senator Fowler calls for an interim study regarding adequacy and constitutional provisions of the current Dental Practice Act. LR 306 by Senator Fowler calls for a study of LB 567 as passed by the 1975 Legislature relating to parole. LR 307 by Senator Fowler calls for a study concerning the issue of nuclear waste transportation. LR 308 by Senator Fowler calls for a study and the procedure for estimating general fund revenues for the state. LR 309 offered by Senator Fowler. (Read. See pages 1634-1638 of the Legislative Journal.)

Finally, Mr. President, Senator Wagner asks unanimous consent to withdraw LR 262 which is a study resolution. (See page 1638 of the Legislative Journal.)

SENATOR CLARK: No objections, so ordered.

CLERK: Mr. President, I have nothing on LB 714A.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 714A.