

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-fourth day of the One Hundred Ninth Legislature, First Session. Our chaplain for today is Pastor Matt Prose, GLOW Church, Ralston, Nebraska, in Senator Riepe's district. Please rise.

MATT PROSE: Let's bow our heads for a word of prayer. Father, we thank you for this amazing state of Nebraska. We thank you for the United States. And God, we invite you into this meeting this morning. We thank you for every decision that will be made, every conversation that will be had. Lord, we thank you for every elected official in this room. We ask that you give them wisdom in the processes and everything that is talked about. We thank you, Lord, for your involvement in what is taking place here today, and we thank you for being in this room. In Jesus' name, we pray. Amen.

KELLY: I recognize Senator Murman for the Pledge of Allegiance.

MURMAN: Please join me in the pledge. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

KELLY: Thank you. I call to order the twenty-fourth day of the One Hundred Ninth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

KELLY: Are there any corrections for the Journal?

CLERK: I have no corrections this morning, sir.

KELLY: Are there any messages, reports, or announcements?

CLERK: There are, Mr. President. Your Committee on Judiciary, chaired by Senator Bosn, reports LB230 to General File with committee amendments. Additionally, notice of committee hearing from the Urban Affairs Committee, as well as the Transportation and Telecommunications Committee and the Nebraska Retirement Systems Committee. New LR: LR43, introduced by Senator Ballard. That will be laid over. That's all I have at this time.

KELLY: Senator Hughes would like to recognize the doctor of the day. Dr. Hotovy of York is with us. Please stand and be recognized by your Nebraska Legislature. While the Le-- while the Legislature is in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

session and capable of transacting business, I propose to sign and do hereby sign LR38. Senator Lippincott, you're recognized for an announcement.

LIPPINCOTT: I'd like my colleagues to join me to say a very happy birthday today to Senator Bob Andersen, and to congratulate him for his 21 years of service in the United States Air Force. We appreciate it. Happy birthday.

KELLY: Senator Brandt would like to announce some guests seated under the South balcony. They are members of Community Action from Fairbury and Lincoln. Please stand and be recognized by your Nebraska Legislature. Mr. Clerk, please proceed to the first item on the agenda.

CLERK: Mr. President, first item: General File, LB240, introduced by Senator Jacobson. It's a bill for an act relating to the community development law; amend Section 18-2147; changes notice provisions relating to the division of taxes; repeals the original section; declares an emergency. Bill was read for the first time on January 14 of this year and referred to the Urban Affairs Committee. That committee placed the bill on General File. There is nothing currently on the bill, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Jacobson, you're recognized to open.

JACOBSON: Thank you, Mr. President. And good aft-- good morning, colleagues. Today, I'm here to introduce LB240, a bill that makes a simple yet critical adjustment to the timeline for administering tax increment financing, or TIF, under Nebraska's community development law. Notices regarding the division of ad valorem taxes in TIF projects must be submitted to the county treas-- county assessors by August 1. LB240 changes the deadline to on or before July 1. This allows for a one-month extension intended to give county assessors additional time to perform their duties such as assessing property values, accounting for increases in valuation, and ensuring accurate calculations for distributing tax revenue under TIF agreements. This change provides additional time to address the complexities of TIF projects, ensuring a smoother process for all stakeholders. While simple, this adjustment dramatically enhances the efficiency and effectiveness of TIF administration. LB240 also includes an emergency clause, ensuring that this timeline takes effects immediately upon passage. Thank you for your time. I ask for your grun-- green vote on LB240, and would be happy to answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: Thank you, Senator Jacobson. Seeing no one else in the queue, you're recognized to close. And wai-- waive closing. Members, the question is the advancement of LB240 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB240 advances to E&R Initial. Mr. Clerk.

CLERK: Mr. President, next item on the agenda: General File, LB286, introduced by the Urban Affairs Committee. It's a bill for an act relating to economic development; amends Section 81-12,110, 81-12,208; provides an application deadline under the Nebraska Innovation Hub Act; changes an application deadline under the Nebraska Rural Projects Act; and repeals the original section. Bill was read for the first time on January 15 of this year and referred to the Urban Affairs Committee. That committee placed the bill on General File. There's currently nothing on the bill, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator McKinney, you're recognized to open.

McKINNEY: Thank you, Mr. President. LB-- and good morning, everyone. I'm here to present LB286. LB286 changes provisions relating to the application deadlines under the Nebraska Innovation Hub Act and the Nebraska Rural Projects Act. Here, the deadlines are changed to December 31, 2025. This is a very simple change. LB286 was created in order to fix a drafting error in LB1344 last year, which did not appropriately update the I-Hub or Rural Projects deadlines in accordance with the bill. Inserting the deadline here provides clear guidance and transparency for the applicants. LB286 was heard in the Urban Affairs Committee on January 28. We had no online comments and no testifiers. The bill was moved out of committee unanimously. Again, this is a simple change, and I welcome any questions, and hope to move this to Select File. We'll hope for your green vote. Thank you.

KELLY: Thank you, Senator McKinney. Senator Kauth, you're recognized to speak.

KAUTH: Thank you, Mr. President. Would Senator McKennedy-- McKinney yield to a question, please?

KELLY: Senator McKinney, would you yield to questions?

McKINNEY: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KAUTH: Could you go into some more detail about why the original deadline was missed and why it's necessary to extend the deadline for this?

McKINNEY: It's not necessarily extending it. Last year, when a lot of bills were being amended, it just got missed in drafting some type of way. It just got overlooked.

KAUTH: OK. So it-- but it-- the, the bill originally wanted the deadline to be in 2023, is that correct?

McKINNEY: No, it was supposed to be December 31, 2025 la-- last year, but it didn't get added in for some, some weird reason.

KAUTH: OK. So drafting error more than anything?

McKINNEY: Yeah.

KAUTH: OK. Thank you.

McKINNEY: No problem.

KELLY: Thank you, Senators Kauth and McKinney. Seeing no one else in the queue. Senator McKinney, you're recognized close. And waive. Members, the question is the advancement of LB286 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Has everyone voted who wishes to vote? Record, Mr. Clerk.

CLERK: 41 ayes, 0 nays, Mr. President, on advancement of the bill.

KELLY: LB286 advances to E&R Initial. Mr. Clerk.

CLERK: Mr. President: General File, LB289, introduced by the Urban Affairs Committee. It's a bill for an act relating to cities and villages; amends Section 17-201 and 17-202 and 19-911 and Section 18-2709; changes provisions relating to the incorporation of a village and the number, election, and terms of members on a village board of trustees; provides a procedure for changing the number of members on a village board of trustees; allows certain city councils to constitute a board of adjustment; redefines qualifying business under the Local Option Municipal Enviro-- Economic Development Act; and repeals the original section. Bill was read for the first time on January 15 of this year and referred to the Urban Affairs Committee. That committee placed the bill on General File. There's currently nothing on the bill, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: Thank you, Mr. Clerk. Senator McKinney, you're recognized to open.

McKINNEY: Thank you, Mr. President. LB289 is a municipality issue bill brought to us by the League of Municipalities. It contains three separate provisions allowing villages to have three village board members with a vote of the people, large retail chains to receive funding as qualifying businesses under the Local Option Municipality [SIC] Economic Development Act, and city councils of the first- and second-class cities to constitute a board of adjustments. The first portion of the bill allows villages to have three village board members with a vote of the people. Currently, state law requires villages to have a five-member board. This provision of LB289 comes from smaller villages reporting having vill-- difficulties in finding and recruiting members to serve on village boards. Secondly, LB289 allows large retail chains to receive LB840 funds. The current language of the LB840 statute reflects the current drafters' intent of ensuring large retail chains are not eligible for LB840 funds. This provision of LB289 comes from municipalities that believe they can make appropriate decisions to do what's in the best interest of their community. The change in LB289 provides municipalities with the flexibility needed to attract retail businesses to their communities. Finally, LB289 allows city councils of the first and second class to constitute the board of adjustments. Board of adjustments are given authority to hear and decide appeals when it is alleged there is an error in any decision made by the administrative official or agency of any zoning regulation. Board of adjustments also deal with regulations relating to location and soundness of structures, interpreting maps, and granting variances. Currently, villages have the option of allowing village boards to serve as their board of adjustments. This provision of LB289 is coming from first- and second-class municipalities reporting difficulty in finding interested and knowledgeable people to serve on the board of adjustments due to the fact that smaller cities have fewer variances to deal with and therefore can go for long periods without having their boards meet. LB2-- LB289 was heard in the Urban affor-- Urban Affairs Committee on January 28. We had three testifiers, all proponents. This bill was voted out of committee unanimously. All the issues contained in LB289 help our state's smaller municipalities, whether it be through government or supporting businesses. I believe LB289's a step in the right direction. And I welcome any questions and your green vote. Thank you.

KELLY: Thank you, Senator McKinney. Senator Hughes, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

HUGHES: Thank you, Chairman. And thank you, Senator McKinney, for bringing, bringing this bill. I rise in support of LB289. This bill actually started with an email from one of my constituents-- constituents in Surprise, Nebraska. Surprise. They-- that municipality-- and I just looked it up-- the population in 2023 is 43 people. And right now in our statute, their board has to have five members. So that is more than 10% of their entire population. So this gentleman had reached out to me and said, hey, is it possible that we could have a board of three instead of five? Because we're really struggling to find five. And so I took this bill. I took it to the League of Municipalities, and they agreed that this is something that needs to be worked on, especially for our small villages. And I know Surprise is not the only small village out there. This will only be done if the, if the village would vote for it to go down to three instead of five. And so I'm very appreciative that the League of Municipalities took it and they took it to Senator McKinney over Urban Affairs. He agreed to, to bring this forward, so thank you for that. And I, I do want to mention that, if anybody's concerned about this, we actually have counties that have three commissioners. So I have one in my district, Polk County. They only have three commissioners. Seward and York each have five. So if you can have a whole county have three commissioners, I'm not sure why we can't have a village have three board members. The other piece to this bill is actually-- was actually also brought on-- with support, I should say, from District 24, and that is that we-- a, a municipality can use their LB840 funds toward a retail business. And just for example, in Seward, we've got a new, a new-- a, a person, an entrepreneur started a new home and garden store, retail store there. And right now, LB840 can't be used for something like that, so this opens up that statute too. And again, appreciate Urban Affairs Committee for, for pushing this out. And I think this is very helpful for our small communities. So I please encourage everybody to vote for LB289. Thank you.

KELLY: Thank you, Senator Hughes. Senator Clouse, you're recognized to speak.

CLOUSE: Yes. Thank you, Mr. President. I too stand up in support of this. The items-- the, the various sections that were described are, are really appropriate to address in this manner. The only question that I had-- and I brought it up in the committee-- was of Section 5, which consolidates the city council and the board of adjustments. And there is history where sometimes these are conflicting, but that will remain to be seen if there are any of those types of issues that happen as a result of, of being-- allowing communities to make these mergers.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

So we'll wait and see on that one. But I do support the bill as it's presented. And I encourage everyone to vote green. Thank you.

KELLY: Thank you, Senator Clouse. Senator Brandt, you're recognized to speak.

BRANDT: Thank you, Mr. President. Would Senator McKinney be available for a question?

KELLY: Senator McKinney, would you yield to some questions?

McKINNEY: Yes.

BRANDT: Senator McKinney, this is good legislation. I have 43 towns and villages in my district, and a lot of them are the same size as Surprise. You know, Harbine, for example, maybe has 35 people. And to have a five-member board is very difficult for them, and quite often it's the same people are forced to do it over and over. Going to three would, would, would help. Mechanically, the people in that village would have to vote to go from five to three. Is that correct?

McKINNEY: Yes.

BRANDT: OK. And does this only apply to villages? I think villages are 825 people or less in the state of Nebraska.

McKINNEY: Yes. It-- it's villages.

BRANDT: OK.

McKINNEY: Yup.

BRANDT: All right. That's all I've got. Thank you.

McKINNEY: All right. No problem.

KELLY: Thank you, Senators Brandt and McKinney. Seeing no one else in the queue. Senator McKinney, you're recognized to close. And waive. Members, the question is the advancement of LB289 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 40 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB289 advances to E&R Initial. Mr. Clerk.

CLERK: Mr. President, next bill: General File, LB293, introduced by Senator Ballard. It's a bill for an act relating to the Professional

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

Employer Organization Registration Act; amends Section 48-2708 and Section 48-2706; changes provisions relating to health benefit plans and employee welfare benefit plans; and repeals the original section. The bill was read for the first time on January 15 of this year and referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File. There are committee amendments, Mr. President.

KELLY: Senator Ballard, you're recognized to open.

BALLARD: Thank you, Mr. President. Good morning, colleagues. LB293 is designed to give professional employer organizations greater flexibility in their health plan benefit offerings. PEOs provide comprehensive human resources services, including payroll, benefits, tax administration, and regulatory compliance assistance for employers. They allow businesses to access benefits such as retirement plans, health insurance, dental coverage, and other employee benefits that might otherwise be difficult to provide independently. In Nebraska, PEOs are regulated through the Nebraska Professional Employer Organization Registration Act, or the PEO Act. Under the PEO Act, a PEO is authorized to offer its-- a covered employee's-- a health benefit plan that either fully insured or self-insured. However, PEOs seeking to sponsor a self-insured plan must comply with certain provisions of the MEWA Act-- the neployer-- the Nebraska Multiple Employer Welfare Arrangement Act. LB293 makes changes to the PEO Act, provides PEOs greater flexibility to incorporate additional consumer protections. The changes would require written notice to covered employees with health benefit plans and self-funded and mandate the filing of financial reports to the Nebraska Department of Labor, certifies sufficient reserves and play-- to pay claims. If a PEO does not have sufficient funds to cover obligations, a hearing procedure commences. The hearing that results in an adverse determination, the PEO must-- can be compliant within 30 days to avoid registration revocation. LB290-- LB293 came out of committee with no opposition votes, and I urge you to pass it on to Select File.

KELLY: Thank you, Senator-- thank you, Senator Ballard. There is a committee amendment from the Banking Committee. Senator Jacobson, you're recognized to open.

JACOBSON: Thank you, Mr. President. And good morning, colleagues. AM148 is the committee amendment to LB293. It makes three changes. First, it clarifies who the report goes to. It had initially said "director," but that was changed to "department" to clarify that the report goes to the Department of Labor. Second, the reporting frequency was changed from

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

annually to quarterly. And finally, AM148 increases the reporting requirements regarding stop-loss insurance policies. I appreciate your support for this committee amendment to LB293. Thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. Senator Holdcroft, you're recognized to speak.

HOLDCROFT: Thank you, Mr. President. Will Senator Ballard yield to a question?

KELLY: Senator Ballard, would you yield to some questions?

BALLARD: Of course.

HOLDCROFT: Senator Ballard, I notice the fiscal note on this is \$266k in 2025 and \$272k in 2026. Can you expand on, on what that is?

BALLARD: Yes, of course. Thank you for the question, Senator Holdcroft. That is just for the compliance purposes. The Department of Labor believes they need another actuarial employee. So to make sure that the self-- that the PEOs are full with compliance, they'd asked for another employee.

HOLDCROFT: Thank you, Senator Byron [SIC]. Thank you, Mr. President.

KELLY: Thank you, Senator Holdcroft and Ballard. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Teaching opportunity. Yes, Senator Holdcroft, it has-- it'll have an A bill eventually, which means that this will sit on Final Reading until we pass the budget. So we can move it along. And don't worry. Senator Ballard's bill won't be taking state dollars that we don't have. It'll just sit and wait until we have a budget. I yield the remainder of my time to the chair.

KELLY: Thank you, Senator Cavanaugh. Seeing no one else in the queue. Senator Jacobson, you're recognized to close on AM148. And waive. Members, the question is the adoption of AM148. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 40 ayes, 0 nays on adoption of the committee amendment, Mr. President.

KELLY: AM148 is adopted. Senator Ballard, you're recognized to close. And waive. Members, the question is the advancement of LB293 to E&R

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

Initial. All those in favor vote aye; all those opposed vote nay.
Record, Mr. Clerk.

CLERK: 41 ayes, 0 nays, Mr. President, on advancement of the bill.

KELLY: LB293 is advanced to E&R Initial. Mr. Clerk.

CLERK: Mr. President: General File, LB527, introduced by Senator Jacobson. It's a bill for an act relating to insurance; amends Section 44-2702, 44-32,180, 44-4726, and Section 77-908; adopts the Medicaid Access and Quality Act; redefines a term; provides for a tax on health maintenance organizations; changes requirements for taxes on prepaid limited health service organizations and direct writing premiums; harmonize provisions; repeals the original section; declares an emergency. Bill was read for the first time on January 22 of this year and referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File with committee amendments, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Jacobson, you're recognized to open.

JACOBSON: Thank you, Mr. President, and good morning, colleagues. Today, I'm asking for your green vote on LB527, the Medicaid Access and Quality Act. This bill is incredibly important to the future of health care in our state, especially in rural areas, and especially for pregnant women and Nebraska children. LB527 is important not just for folks on Medicaid but for the health care of Nebraska as a whole. What does the act do? Many of you remember LB1087, which I introduced last year, and which passed with strong support from the body. The bill imposed an assessment on hospitals, which brought in General Fund revenue that the state could then use as matching dollars to qualify for additional federal Medicaid funding. That funding is directed to enhance payments to hospitals. LB1087 introduced a lot of us to the concept of provider assessment. These types of assessments have become an important source of financing for Medicaid across the country. LB527 is a different type of provider assessment. In this case, the providers are the HMOs. LB527 imposes a 6% assessment on-- or tax on premiums written under an HMO certificate of authority. That assessment is projected to generate approximately \$246 million in general funds. Under LB527, all of that revenue will be credited to a new fund, the Medicaid Assessment Quality Fund, to be used within Nebraska's Medicaid and CHIPS programs. Section 6 of the bill provides directions to DHHS for how this revenue will be used. \$40 million annually shall be used to seek federal participation to enhance rates for non-hospital

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

providers of physical health services. When combined with, with federal funds, this is projected to be a total of approximately \$115 million annually to enhance rates for these providers. \$5 million annually shall be used to, to pay providers a monthly fee for serving as a primary care medical home, helping to coordinate care and keeping patients out of the high-cost, urgent care fac-- emergency care. When combined with federal funds, this is projected to be a total of approximately \$15 million to invest in primary care medical homes. The remaining revenue will stay within the Medicaid and CHIPs programs. This is more than \$100 million in new funds helping to pay for unfunded federal mandates in the Medicaid program and in reductions in FMAP funding. So not only does LB527 do a tremendous amount of good for health care in Nebraska, but it also is a tremendously valuable tool for paying for Medicaid costs that Nebraska is going to have to pay for one way or another. Now let me briefly touch on why the act is critically important. We know we have colleagues-- or, challenges with assessment to-- access to care in Nebraska, especially in rural Nebraska. We have primary care deserts and maternity care deserts. In fact, more than half of our counties are defined as maternity care de-- deserts, and these access challenges can fi-- found-- can be found in both rural and urban areas. If there are access problems to begin with, it's an even bigger problem if you're covered by Medicaid. That's more than 350,000 people in Nebraska, including about a third of pregnancies each year and one-third of Nebraska children. So this is one in three moms, babies, and kids we're talking about. Again, I appreciate your support for this important bill. Thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. As referred-- previously mentioned, there's a committee amendment. Senator Jacobson, you're recognized to open.

JACOBSON: Thank you again, Mr. President. AM137 is the committee amendment to LB527, and it's very simple. All it does is clarify some existing language and remove some unnecessary language. And these suggestions were brought to my office by the Department of Insurance. I appreciate your support for this committee amendment to LB5-- to LB5-- LB527. Thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. Senator Hansen, you're recognized to speak.

HANSEN: Thank you, Mr. President. Just a couple basic questions. If we're looking at the tea leaves a little bit with hospital assessment, I was hoping Senator Jacobson would be able to answer, please.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: Senator Jacobson, would you yield to some questions?

JACOBSON: Certainly.

HANSEN: All right. Thank you, Senator Jacobson. So one of my biggest concerns-- and this is a concern that I had last time with the hospital assessment bill that came up-- that was introduced, I believe, last year--

JACOBSON: Yes.

HANSEN: --or two years ago. What's your purview on federal funding and our ability to access that or its ability to even be there with the hospital assessment funds with-- especially what's going on with the current administration and DOGE and looking at every little nook and cranny? Do you think this is one of the things the federal government will eventually not fund anymore?

JACOBSON: Well, I think that's a very good question, and I would tell you that first and foremost we're waiting for final CMS approval on LB1087. But I would tell you, with LB1087, there are so many states in the Union that are utilizing that today. And this is Medicaid dollars that I think it would be tremendously difficult for the administration to cut out that funding. And I think-- at one point, I think I heard President Trump say that he loves Medicaid, or something to that effect. When it comes to LB527, I think there are fewer states that are participating it today, so that could make this a little more problematic. But there are states, particularly states in the South, that are using this for their total Medicaid funding. So I think there will be a lot of, of, of outcry if DOGE or the president would move to repeal or get rid of that funding. So it's a risk, but I will tell you, if you don't ask, we know what the answer is. If we don't pass this bill, we know we're not going to get the money. If we pass the bill, we have a pretty good chance to get the money. I, I guess I always believed you can't lose what you don't have.

HANSEN: Gotcha. And do you know-- have some hospitals already upgraded their systems or improved their infrastructure with the expectation that they're going to get these funds?

JACOBSON: I don't think so on LB527, because the-- LB527 is actually going to, to providers themselves, not to the hospitals. But on LB1087, I will tell you that there are some rural hospitals that, if they-- if, if LB1087 does not get approved by CMS, you will see closures of rural-- some rural hospitals that are really counting on these funds.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

In fact, I know of one in particular that's actually borrowing against the receivable to keep their doors open.

HANSEN: OK. Well, I-- well--

JACOBSON: Let me be clear--

HANSEN: They, they borrowed it? They--

JACOBSON: I'm not, I'm not loaning them the money, though, just so you know.

HANSEN: OK. Well, that's good. One other question. So do you expect then, with all this extra federal funding in the hundreds of millions of dollars, that hospitals and even rural hospitals will decrease health care costs?

JACOBSON: I don't, I don't know why they would increase health care costs. I think what you're finding right now is they're not seeing a number of Medicaid patients, OK? Because the reimbursements are so low. So what this would do is raise those, those reimbursements to a point where they will actually see them. So it should not have any, any impact at all in terms of what the costs are going to be. It's really going to impact the number of, number of, of, of people that will be served, per-- specifically Medicaid.

HANSEN: OK. All right. I appreciate you answering my questions. Thank you, Senator.

KELLY: Thank you, Senators Hansen and Jacobson. Senator Spivey, you're recognized to speak.

SPIVEY: Thank you, Mr. President. Would Senator Jacobson please yield to a question?

KELLY: Senator Jacobson, would you yield to questions?

JACOBSON: Yes, I would.

SPIVEY: Well, thank you, Senator Jacobson, for the context too. I do agree with you around the primary maternity care deserts and reimbursement rates for Medicaid. And so I appreciate the intention behind making sure the body understands that context. And I just want to make sure I understand the bill, because Medicaid and Medicare can be so complicated. And so, with this tax, the 6%-- so let's use, for example, Nebraska Total Care. That is our MCO here in Nebraska. Would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

this 6% tax then go to Centene, their parent company, on their non-Medicaid plans, and that will come back into our Medicaid fund in order to pay to raise reimbursement rates for Medicaid? Am I understanding that correctly?

JACOBSON: That's, that's the concept. Yes, it is. And you're a really smart person, I might add, so I get a little nervous when you start asking me questions.

SPIVEY: No, this was a easy one. I just wanted to make sure I understood. I just want to-- just to understand the tax and what did that look like. So I appreciate you answering my question. Thank you, Mr. President. And thank you, Senator Jacobson.

KELLY: Thank you. Senator Spivey and Jacobson. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. So this is a bill that I was actually also considering bringing, and then I found out that Senator Jacobson was bringing it. But there was a little difference between what I was going to bring and what Senator Jacobson has brought, and that is where the money is directed. I was going to have it go to the Medicaid excess cash fund instead of the General Fund. And Senator Jacobson and I have discussed this. And-- would Senator Jacobson yield to a question?

KELLY: Senator Jacobson, would you yield to questions?

JACOBSON: Yes, I will.

M. CAVANAUGH: Thank you, Senator Jacobson. So you and I talked off the mic about this, that I would like to see this money go into the Medicaid excess cash fund and then shift things from the General Fund that are health care-related to the Medicaid excess cash fund so that we're getting the same impact of freeing up General Fund dollars, but we are also using the funds for more appropriate aligned usage. And-- so we talked about that. And I guess I'll let you speak to that.

JACOBSON: Well, well, first of all, thank you again for talking to me before off the mic. I always appreciate not being ambushed, and you're-- you were very courteous in, in doing that. I did seek out the answer to your question. And I would refer you to the introduced copy, page 3, line 8 and 9. It says the State Treasurer shall annually credit an entire-- the entirety of the tax remitted to the Medicaid Access and Quality Fund. So it's a new fund being set up that's dedicated--

M. CAVANAUGH: Oh.

JACOBSON: --to, to this effort. So it's accomplishing what you want--

M. CAVANAUGH: OK.

JACOBSON: --to accomplish, but it's a new fund.

M. CAVANAUGH: OK. So it's not going into the General Fund?

JACOBSON: No, no.

M. CAVANAUGH: Well, then I misunderstood.

JACOBSON: Well-- and, and the excess-- any excess from that would then go towards CHIPS. So it's not going to make its way to the General Fund. You're correct. And it will avoid, as you accurately pointed out-- if we don't get these dollars, then money's coming out of the General Fund to fund the Medicaid needs--

M. CAVANAUGH: Right.

JACOBSON: --and this is going to supplant that.

M. CAVANAUGH: So is there a reason to create a new fund as opposed to just putting it into the existing fund?

JACOBSON: It's a requirement of the syst-- of the program.

M. CAVANAUGH: Oh, OK. All right. Well, thank you. I appreciate that clarification.

JACOBSON: Thank you.

M. CAVANAUGH: And I guess that's all my questions. I yield the remainder of my time.

KELLY: Thank you, Senators Cavanaugh and Jacobson. Seeing no one else in the queue. Senator Jacobson, you're recognized to close on the amendment. And waive. Members, the question is the adoption of AM137. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: AM137 is adopted. Seeing no one else in the queue. Senator Jacobson, you're recognized. And waive closing. Members, the question is the advancement of LB527 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB527 is advanced to E&R Initial. Mr. Clerk.

CLERK: Mr. President: General File, LB609, introduced by Senator Bostar. It's a bill for an act relating to fraud; amends several sections of law; adopts the Controllable Electronic Record Fraud Prevention Act; requires certain notice to purchasers of gift certificates of-- or gift cards; defines a term; provides for forfeiture for convictions for certain offenses involving theft by deception, forgery, and identity theft; provides for forfeiture of control electronic records; clarifies and harmonizes provisions; provide severability; and repeals the original section. Bill was read for the first time on January 22 of this year and referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File with committee amendments, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Bostar, you're recognized to open.

BOSTAR: Thank you, Mr. President. And good morning, colleagues. Each year, scammers steal billions of dollars from unsuspecting consumers, causing deep financial and emotional harm. With criminals leveraging generative AI and other sophisticated methods, fraud is increasingly difficult to detect and prevent. In 2023 alone, the Federal Trade Commission reported \$10.3 billion in fraud losses. Most victims never recover their funds. The use of gift cards and cryptocurrency kiosks have emerged as major avenues for fraud. In 2023, more than 69,000 cryptocurrency-related complaints were filed with the FBI's Internet Crime Complaint Center, totaling \$5.6 billion, nearly half of all financial fraud losses. These kiosks allow quick, irreversible transfers, creating significant hurdles for victims seeking restitution. Additionally, gift card scams have been a persistent problem, costing consumers \$228 million in 2022. Criminals often coerce victims into purchasing cards or depositing money at a kiosk, thereby making victims unknowingly facilitate the theft of their own funds. LB609 responds to these challenges by requiring crypto kiosks and entities selling gift cards or gift certificates to post a notice warning purchasers about potential fraud. The legislation requires cryptocurrency kiosk operators to be licensed under the Nebraska Money Transmitters Act, adhere to daily transaction limits, clearly disclose

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

fees and exchange rates, issue receipts with relevant transaction details, and offer refunds for fraudulent transactions. These measures aim to give consumers enough information to recognize and avoid scams before they become a victim and to help law enforcement investigate these crimes promptly. Retailers utilizing model notice language developed by the Attorney General's Consumer Protection Division will be considered in compliance. Retailers will be subject to written warnings for initial violations and a possible civil penalty of up to \$250 for repeat violations. Closed-loop gift cards and prepaid cards issued directly by financial institution are exempt from these requirements. Finally, LB609 equips law enforcement with tools to recover controllable electronic records acquired by fraud and restore those funds to victims of these crimes. By placing standards on crypto kiosks and setting uniform fraud notice requirements, LB609 helps make it harder for scammers to prey on our fellow Nebraskans. While it will not end all forms of fraud, it will represent a necessary step forward, protecting consumers and giving law enforcement the tools they need to respond effectively. The bill was heard in the Banking, Commerce and Insurance Committee on February 10. The committee amendment satisfies the concerns of opposition testimony, and the bill was unanimously advanced by the committee. I'd ask for your green vote on LB609. Thank you very much.

KELLY: Thank you, Senator Bostar. As the Clerk stated, there is a committee amendment. Senator Jacobson, you're recognized to open on the amendment.

JACOBSON: Thank you, Mr. President. AM157 is the committee amendment to LB609. AM157 strikes original Sections 13 to 22 of the bill. These sections were related to civil forfeitures in criminal cases. It also amends Section 2 by changing how "controllable electronic record" is defined and changes the time frame within certain definitions from 30 days to 14 days. It amends Section 3 to better reference the Nebraska Money Transmitters Act. And it improves the approval recomm-- requirement for the Nebraska Department of Banking and Finance on the placement of kiosks. It also ties the reporting requirements under this section back to Nebraska Money Transmitters Act. Daily withdrawal limits were increased from \$5,000 to \$10,500 in certain situations. Some unnecessary language was removed regarding the law enforcement contact information kiosk operators must possess. AM157-- also an additional requirement stating that the Consumer Protection Division of the Office of the Attorney General must create model notice language and enti-- and, and, and entities that use this model notice language or something substantially the same shall be found to be in compliance with the act. Finally, AM157 adds a new section that would amend 29-817

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

by inserting, quote, any controllable electronic records, end of quote, as a type of property that can be seized in criminal investigations. I appreciate your support for the committee amendment to LB609. I might add that this is a-- is an important bill because this is largely unregulated today. Today, by moving to \$10,500 per day maximum limit in certain situations-- today, there is no limit. None at all. This is a bill that we need to move forward and probably monitor as we move forward. I still have some money laundering concerns, as do, I think, law enforcement, but I think we'll see how this moves forward. But this is a big improvement from what we have today. It's kind of the wild west right now. This is going to bring some structure to it, so I appreciate Senator Bostar bringing the bill and working through the negotiations to get to where we are. So I'd encourage your green vote on, on LB609 as amended with this amendment.

KELLY: Thank you, Senator Jacobson. Senator Brandt, you're recognized to speak.

BRANDT: Thank you, Mr. President. Would Senator Bostar yield to a question?

KELLY: Senator Bostar, would you yield to some questions?

BRANDT: Absolutely.

BRANDT: So Senator Bostar, you're talking about crypto kiosk. Are these like ATMs where you exchange money or-- I don't think I've got a crypto kiosk anywhere in the 32nd District. Can you tell me in layman's terms exactly what this is and what this bill does for those?

BOSTAR: Well, first of all, Senator, my guess is you do have at least one of these in your district. But I-- so, I'll, I'll start with the technical definition, then I'll describe a little about what that is. So technical definition is-- this is-- we're talking about a controllable electronic record kiosk, which is an electronic terminal machine acting as a mechanical agent of its operator used to facilitate the exchange of controllable electronic records for money, bank credit, or other controllable electronic records. And the kiosk may connect directly to a separate exchange or draw upon the controllable electronic records held by the kiosk's operator. In this case, controllable electronic record is, is-- function-- we're talking about crypto. And so this is basically like an ATM, and it's used to-- you would put in money, whether-- a lot-- some of them take cash, people will feed cash into them, bank cards, and it'll pull that and do a, a transfer over to some kind of digital currency and, and have that sent

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

to another digital wallet somewhere else. So it's, it's acting as a money transmitter, and that's why we are requiring them to be licensed under the Money Transmitters Act, because that is the role they are playing.

BRANDT: So is this actually a physical presence somewhere, that you go into a store and do this?

BOSTAR: Yeah. This is a physical kiosk that-- it, it, it doesn't really look like an ATM, but, I mean, it's basically like that. It, it looks similar to an ATM. And, you know, the operators of these kiosks will have rental or lease agreements with local retailers to put one of these in their shop or gas station, things like that.

BRANDT: So how many of these are there currently in the state of Nebraska? Do you have any idea?

BOSTAR: We don't really know for sure. We will know for sure after this bill passes, and that's one of the necessary pieces of information that we're lacking currently. But there are a lot of them.

BRANDT: And I guess my final question is, I understand AARP is the one that, that brought you this. Is that correct?

BOSTAR: Yeah. The bill's components were brought by AARP and law enforcement-- AARP, to protect their members as well as all Nebraskans from fraud and being scammed. And law enforcement in particular has really struggled to-- they, they don't have the tools they need to go after this kind of crime fully. And when they are able to identify and track fraudulent funds-- so if someone went and scammed you and stole \$100,000 from you-- and even if they're able to identify the digital wallet that that money went to, they're unable to recover it. So this bill would also provide them with tools necessary to hopefully be able to retrieve those funds and, and get them back to you.

BRANDT: That really helps. Thank you, Senator Bostar.

BOSTAR: Thank you.

BRANDT: I like this bill. I'm going to vote for AM157, and I will support LB609. Thank you, Mr. President.

KELLY: Thank you, Senators Brandt and Bostar. Senator Conrad, you're recognize to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I really appreciate my friend Senator Bostar bringing forward this measure. It's a new and interesting issue for me to learn more about, and it's always a challenge to catch the law up to technology that moves at a lightning-fast pace con-- in sharp contrast to, to lawmaking. So, it seems like this is the, the general intent there. And I, I also heard a lot of very clear statements from my friend Senator Bostar that at the heart of this measure is really a desire to strengthen consumer protection and to strengthen the legal landscape to ensure that law enforcement and other entities have the information and tools they need when Nebraskans are harmed by cyber fraud or digital fraud or cyber-related scams and threats. That will be accomplished through a series of, it seems, registration and licensing and perhaps even some civil penalties, I guess, for, for retailers, if I understood the measure correctly. So this makes sense for a lot of reasons. There is a broad theme present in this year's Legislature to figure out solutions to protect Nebraska consumers from emerging cyber threats or cybersecurity issues, to ensure that their private information remains private, to ensure that there are remedies in place to help consumers when they are harmed by cyber fraud. And whether that's Senator Bosn's bill related to different aspects of keeping kids safe from social media, or Senator Storer's, there's also, I think, perhaps a component in Senator Bostar's bill here today to figure out how to strengthen consumer protection. I also just want to note perhaps the, the irony of the agenda today in regards to the placement of this measure and the very next measure on our agenda, which, rather than seeking to provide additional consumer protections for Nebraskans who are harmed by cyber fraud or digital fraud or scams and their personal information is breached and misused, the very next bill on our agenda provides a sweetheart deal and clear immunity to big companies that act careless with our private information online, subject to, subject to cybersecurity threats and fraud and data breaches. So I, I want us to keep in mind some sort of clarity about how we approach these measures. Do we move together to figure out how to strengthen protection for consumers-- which we should-- which should enjoy broad support across the state and across the political spectrum? And do we keep that same north star in mind for the other measures that are before the Legislature and the very next measure that is on our agenda today, which goes in the opposite direction, providing additional immunities for big corporations who act negligently and carelessly with our online information by closing the courthouse doors to Nebraskans who are harmed by corporate negligence? We, we really need to think carefully about how we approach not only this measure but the very next measure on the agenda today. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: Thank you, Senator Conrad. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. Still trying to decide where I'm at on this bill, primarily because I'm looking at the licensure requirements for the Nebraska Money Transmitter Act, and it doesn't apply to the United States or any department, agency or "instrumentality" thereof, any postal service, any state or political subdivision, bank, credit union, digital asset depository, institution, building, loan association, savings and loan association, savings bank, and mutual, mutual bank organized under any state or United States' laws. And I could go on and on. And I'm just wondering, why are we requiring these kiosks to be licensed under the Money Transmitter Act but not requiring these entities? I think it would make sense because I would think we should be tracking fraud if somebody's committing fraud through our ATMs and things like that. So I'm just curious of why these entities are excluded and we want to, you know, include these crypto kiosk. I'm just kind of lost. Could Senator Bostar answer a question about why?

KELLY: Senator Bostar, would you yield to some questions?

BOSTAR: Yes.

McKINNEY: All right. Senator Bostar, I'm looking at the licensure requirement under the Nebraska Money Transmitter Act, and it does not apply to a lot of people. But I'm-- maybe I'm misreading, but are you trying to make it apply to the kiosks for, like, the cryptocurrency, right?

BOSTAR: So, so-- yes. And, and some background on this. So things like a bank or a credit union or some of these other financial institutions, they may do money transmission, but they're not necessarily money transmitters, right? They're actually kind of so much more than that. So they fall under different acts. What-- the situation we have now is if someone commits fraud and they steal a bunch of money, regular dollars from you, and they put it in their own bank account. We, we as the, the state, law enforcement have the tools to go in and track that money, freeze your account, seize that-- those dollars as evidence, and then bring restitution to give that money back to you. We currently do not have that ability on the digital asset and controllable record side, and that's what we're trying to do.

McKINNEY: But, but don't banks have satellite ATMs and those type of things all over, right?

BOSTAR: Yes.

McKINNEY: So I'm just kind of confused why we're not including them.

BOSTAR: They are already-- I, I will-- I'd be happy to get more detailed information out of our current statutes. But they are-- they're already covered.

McKINNEY: Or--

BOSTAR: They don't need to be covered under this to be covered.

McKINNEY: Or a collection agency or a credit service agency or a debt management business. I'm looking at this and I got many questions about why a lot of these entities are not included. But I'm just confused, because I would-- I could assume a lot of fraud can be taking place in a lot of these entities, and I don't know why they're-- if we're going to go after fraud, I think we should go out to fraud in all these realms. But thank you.

BOSTAR: Yeah, if, if I-- if there's any time left. I, I appreciate that, and, and I agree with it. And currently, we are able to go after fraud for those entities. They just aren't defined as money transmitters. But I'm happy to work on, on getting more information and also identify-- if we've got gaps in the law currently, we should absolutely fill them. Thank you.

KELLY: Thank you, Senators Bostar and McKinney. Senator Jacobson, you're recognized to speak.

JACOBSON: Thank you, Mr. President. I just want to ad-- address a couple of issues that maybe fill in some gaps here. So everybody understands, these kiosks are set up. You go to the kiosk, you feed cash dollars into the kiosk, and then you can pick where you want that money to go. In many cases, you're putting it into a crypto wallet. So if you have the number for the crypto wallet, you move it into that crypto wallet and the money gets transferred. And now that money's untraceable. So what's been happening is-- it used to be, in banks, we would find that people would come to the teller line and they maybe are working with some kind of an online scam that tells them that they need to wire some money to another country. So they'll come in, get cash, go to Western Union, and then wire the money out. Well, that's all traceable. So what's happened now with these kiosks is you're coming in and taking cash, going to one of these kiosks, and they're going to tell you what crypto wallet number that it needs to go into. You feed it in there, transfer it to that wallet, now that money's gone. There's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

no recovery. There's no way to trace it, trace it back. So that's one of the problems that we have right now. And, of course, today, there's no limit to the daily amount that you can put in there, which is crazy because in the banking industry, we're, we're filing all kinds of paperwork. If you're doing a \$10,000 or more transaction, either cash in or cash out, we've got to report that in a currency transaction report. But yet, this is completely exempt. So what we're running into is-- we've run into a number of cases, particularly with elderly people, who get some kind of an online or some-- somebody telling them that they need to do this, give them the instructions. They withdraw cash from their bank, they go to one of these machines, they make the transfer, the money's unrecoverable. So that's why AA-- AARP is so concerned about this situation. Really what this is doing is creating an opportunity for someone to deposit cash and transfer it into a crypto account without having to go-- you'd go through a bank to, to make that happen, which you wouldn't if it's a crypto account. So all we're trying to do is bring the amounts down-- which I'm not sure they're down far enough. And I would certainly hope that we might be able to maybe amend this on, on, on Select. I still-- and I, I know Senator Bostar and I've talked about this, that the \$10,500 seems still a little too high. I would certainly like to see this under \$10,000, maybe back to the \$5,000 we started with on a daily limit. There's also limits for new users so that if you're someone that-- you're-- that's getting scammed, you'd be a new user probably, and you're going there, and we're limiting how much they could get-- they could get scammed for. So, that's what we're trying to get done is bring them under a regulatory regime to where it's not the wild, wild west. There'll probably be other works that'll have to be done in the future, but this is an important first step. So I would encourage you to vote for AM157 and LB609.

KELLY: Thank you, Senator Jacobson. Senator Moser, you're next.

MOSER: Thank you, Mr. President. I was wondering if Senator Jacobson would respond to a couple of questions.

KELLY: Senator Jacobson, would you yield to some questions?

JACOBSON: Yes, I would.

MOSER: So currently, if a customer comes into a bank and wants to deposit \$10,000, there's paperwork that has to be filled out and filed with the federal government, the state?

JACOBSON: Yeah, it goes to FinCEN.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

MOSER: OK. And what do you think the purpose of that is?

JACOBSON: Well, the theory is that law enforcement will use that to be able to track down the nefarious players that are out there. And I would guess with, with AI, as we develop artificial intelligence, they will be able to probably do a better job with that information. I think many banks believe that right now it kind of goes into a black hole because there are so many filings that occur.

MOSER: But, but if I put-- let's say I get a big cash sale and I put \$10,000 in the bank, there's going to be a record of that even if you didn't file the return. If I was audited, they could look at my bank records and they could see that deposit, right?

JACOBSON: That's right.

MOSER: So-- and that does not happen in these kiosks?

JACOBSON: Correct.

MOSER: And so if you wanted to send-- if you wanted to shelter money from paying tax from the IRS or from-- or maybe you have judgments against you and you don't want to pay them, this would be a way to hide that money?

JACOBSON: I think there's any number of, I guess, ways that these could be misused by those who want to skirt the law.

MOSER: I guess it's encouraging that you couldn't think of a lot of ways to use this illegally.

JACOBSON: I-- I'm trying not to give people ideas.

MOSER: All right. So it, it's not as crazy of a-- or, as ethereal of a bill as you might think. It closes a loophole and hopefully will create some track record where this money is going and, you know, give us some track record so we can trace it down if people's money disappear. Thank you.

JACOBSON: Thank you.

MOSER: Disappears.

KELLY: Thank you, Senators Moser and Jacobson. Senator Conrad, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

CONRAD: Thank you. Mr. President. I was wondering if Senator Jacobson would yield to some questions, please.

KELLY: Senator Jacobson, would you yield to some questions?

JACOBSON: Absolutely.

CONRAD: Thank you, Senator Jacobson. I saw that you were already on the mic, so I, I wanted to catch you before you, you had a chance to sit down or head to the Rotunda. But admittedly, this is an area of law that I'm trying to get up to speed on in regards to cryptocurrencies and some of these, these new technologies and how those interface with both consumer protection objectives and traditional approaches to financial regulation on the credit unions or the banks, which, of course, you are-- have a considerable amount of expertise on. So my question is, before the Banking Committee, or more generally, is this kind of a, a first dip of our toe into the water on regulate-- regulation of cryptocurrencies, so to speak, or do we already have other approaches in Nebraska or on the federal level that seek to regulate this, this emerging financial instrument?

JACOBSON: Well, let me first say that, that the way I see cryptocurrency-- let's use, for an example, Bitcoin--

CONRAD: OK.

JACOBSON: --as one of the cryptocurrencies that's out there. If you go to one of these, you know, kiosks, you can deposit it and put it into crypto. But the bigger question you got to ask is, is crypto really a currency? OK? Because if I want to buy a pack of gum, I'm not going to pay for it with crypto. OK? And I would tell you that, in my mind, crypto is a speculative asset based upon the highs and lows that it's had. It's trading for over \$110,000 a coin today.

CONRAD: OK.

JACOBSON: And, and I would tell you that people invest in it because it-- they, they-- they've seen the speculative upside that's there. But I would also say it gets used a lot for ransomware, OK? For, for ransom attacks. I mean, if you want to-- if you're going to create a ransom attack, they're not going to take our check. OK? They want something that's anonymous so they get paid in crypto so it's untraceable and they get away with the crime. So those are two things that crypto, I see, has been used for. If you want transactions, now you're looking at stablecoins, and there is a bank that was just approved for a-- as, as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

a finan-- there to be a, a financial-- I, I would say it's a digital asset financial institution that is using Telcoin--

CONRAD: OK.

JACOBSON: --and they were approved by the department. Now, they will be doing transactions, but it has nothing to do with crypto. They do use the blockchain, but they don't-- they're not using crypto, per se.

CONRAD: OK. Thank you, Senator. That, that's very, very helpful to just kind of provide a, a greater context for this specific legislation, which I think is important and does further important consumer protection kind of goals. And I was just trying to figure out if our approach to these kiosks is the same for other aspects that this currency or new financial industry or instrumentality is, is utilized in or if we're just really zeroing in on the kio-- kiosk component of it and leaving the rest to remain the wild west, for lack of a better term.

JACOBSON: Yeah. That's, that's a great question, and the answer's the latter. In other words--

CONRAD: OK.

JACOBSON: --we didn't go to the industry and say we're going to bring this. Basically, the problem came to us, OK? These crypto kiosks have been out there for a while now. They've been virtually unregulated. And now people are getting scammed, so now we're being asked to bring in some regulation. So this is step one on how to regulate that. I do not see us going out and leading the charge on providing any further regulation on crypto or digital currencies. I think what we're doing is just trying to stay current with the changes as they, as they develop.

CONRAD: Very good. Thank you, Senator. Thank you, Mr. President.

KELLY: Thank you, Senators Conrad and Jacobson. Senator Lippincott and Clements would like to announce some guests in the north balcony. They are K-12 students and adults from the Nebraska Christian Home Educators Association. Please stand and be recognized by your Nebraska Legislature. Seeing no one else in the queue. Senator Jacobson, you're recognized to close on the amendment. And waive. Members, the question is the adoption of AM157. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

KELLY: AM157 is adopted. Seeing no one else in the queue. Senator Bostar, you're recognized to close on the bill.

BOSTAR: Thank you, Mr. President. And thank you, colleagues, for the conversation. Again, this bill will just help us protect our fellow Nebraskans from one avenue of fraud that we are seeing. And with that, I would appreciate your green vote. Thank you very much.

KELLY: Thank you, Senator Bostar. Members, the question is the advancement of LB609 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 40 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB609 advances to E&R Initial. Mr. Clerk for items.

CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB362, LB139, LB231, LB357, LB180, and LB59 to Select File, some having E&R amendments. Reference report from the Referencing Committee concerning LR40, as well as a rereference and several references of gubernatorial appointments. Notice of committee hearing from the Government, Military and Veterans Affairs Committee. New LR: LR44, introduced by Senator Murman; that will be laid over. Notice that the Banking, Commerce and Insurance Committee will have an exec session under the south balcony at 10:30 this morning. Banking Committee, 10:30, under the south balcony. That's all I have at this time, Mr. President.

FREDRICKSON: Thank you, Mr. Clerk. Next item on the agenda.

CLERK: Mr. President, next item on the agenda: Legislative-- General File, LB241, introduced by Senator Hallstrom. It's a bill for an act relating to data privacy; defines terms; provides an exemption from liability for certain private entities as prescribed. The bill was read for the first time on January 14 of this year and referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File. There are no committee amendments. There is an additional amendment, Mr. President.

FREDRICKSON: Thank you, Mr. Clerk. Senator Hallstrom, you're recognized to open.

HALLSTROM: Thank you, Mr. President, members. I'm here today to introduce LB241, a bill pertaining to cybersecurity. There was just an announcement that I have a Banking Committee executive session at 10:30, so I hope we can wrap this up in time for me to attend. LB241

would prevent a private entity from being liable in a class action lawsuit resulting from a cybersecurity event unless the cybersecurity event was caused by the willful, wanton, or gross negligence on the part of a private entity. In its simplest terms, LB241 requires a higher burden of proof for a class action lawsuit in the event of data breaches. What it does not do is eliminate the right of any individual victim of a data breach or cybersecurity event as defined in the bill to file a lawsuit in Nebraska to seek redress. However, in many of these cases, we have personal information such as driver's license numbers or birth dates that are accessed after a business faces a cyber attack. Although no business wants their customer data stolen, it is the business that faces the ransom demand from the hackers. There's typically no monetary loss or little monetary loss on part of the customer. Recent years have shown that class action lawsuits over cybersecurity incidents are often filed even when plaintiffs have not experienced actual monetary harm. These cases typically focus on speculative risks such as the potential for identity theft or data misuse rather than tangible financial losses. This trend has several implications for businesses. Strain on judicial resources. Courts are burdened with handling lawsuits that often lack substantive claim or actual harm, diverting attention from cases with genuine grievances. Second, costs to businesses. Businesses facing these lawsuits incur substantial legal fees and reputational damage even when the claims lack merit. This can disincentivize investment in innovation and security improvements. Further, it has caused a spike in premiums for cybersecurity insurance. Third, minimal benefits to plaintiffs. Plaintiffs in such cases rarely receive meaningful compensation. Instead, settlements often result in nominal payouts or extended credit monitoring services that may not address genuine risks. This surge in class action lawsuits highlights the need to balance legal standards that protect consumers without unfairly penalizing businesses for breaches that occur despite reasonable precautions having been taken by the business. LB241 was brought to address these situations. If a business acts unreasonably in protecting customer data, there would be no protection under the bill. However, where reasonable precautions are taken, businesses should not be subject to class action lawsuits, particularly where no consumer has suffered monetary loss. In these cases in which customers do not-- do suffer monetary loss, the bill would have no effect on the ability of customers to file a lawsuit against the business. This legislation is modeled most closely after a law in Tennessee, however other measures have been introduced in a number of states that go one step further and provide an affirmative defense or safe harbor for businesses who take certain measures. These include the states of Florida, West Virginia,

Ohio, Utah, and Iowa. LB241 does not go as far and instead is a reasonable balance between customer protection and costs to businesses. LB241 defines a cybersecurity event as nonpublic information stored on an information system. Nonpublic information includes Social Security numbers, driver's license or state ID card numbers, financial account or credit or debit card numbers, and biometric records. The bill would cover any private entity, whether incorporated or unincorporated, or for-profit or not-for-profit businesses. Again, the operative language of LB241 provides that a private entity shall not be liable in a class action resulting from a cybersecurity event unless the cybersecurity event was caused by willful, wanton, or gross negligence on the part of the private entity. In other words, the bill provides a heightened standard of proof requirement in order to bring and successfully win a class action lawsuit, that being willful, wanton, or gross negligence instead of an ordinary negligence standard of proof. Yet this legislation would still allow, and not prohibit, a customer to bring an individual direct lawsuit against a defendant seeking the recovery of monetary damages for a cybersecurity event based on an ordinary standard of negligence. The practical effects of LB241 can be summarized as follows. Liability protection for private entities. LB241 provides a safety net for businesses, allowing them to operate without excessive fear of litigation over cybersecurity breaches that occur despite reasonable precautions having been taken. Two, encouragement of proactive cybersecurity measures. In defining clear terms for liability-- the example is gross negligence-- the bill incentivizes private entities to maintain strong cybersecurity practices without the risk of undue legal repercussions. Third, focus on data privacy and security. The bill emphasizes the importance of protecting nonpublic information, including sensitive personal identifiers like Social Security numbers, financial account details, and biometric records. Fourth, support for business growth and innovation. By limiting liability to cases of true misconduct, the bill fosters an environment conducive to growth and innovation, as businesses are less likely to face crippling lawsuits for cybersecurity breaches beyond their control. These benefits collectively aim to balance the protection of consumer data with the operational realities and legal risks faced by private entities. The bill was advanced by the Banking, Commerce and Insurance Committee on a vote of 7-0. The groups-- among the groups supporting the bill were the Grocers, the Retail Federation, the Nebraska Insurance Federation, the Nebraska Bankers Association, the Nebraska Independent Community Bankers, the Nebraska Credit Union Association, the Nebraska Chamber of Commerce, the Greater Omaha Chamber of Commerce, and the Lincoln Chamber of Commerce, as well as the Nebraska Telecommunications Association. While the trial lawyers

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

were opposed to the bill at the committee hearing stage, Mr. Lindsay, who testified on behalf of the trial lawyers, indicated that they were not that concerned with this bill, they didn't think it did much-- that's their opinion, not mine-- and that they were not going to go to the mat on this particular issue. We'll take them at their word on that. And I believe that the, the bill should be advanced in its current position. Some, some data and information while I've got a little time left here. There's been a surge of data breach class action lawsuits. The information that I have is, starting in 2016, there were 115 class action lawsuits. That raised slightly over the next few years. In 2020 and '21, it was up to about 310; in 2022, 654; and in 2023, 1,320. We see businesses in Nebraska in areas not involving data breaches that have threatened action by class action lawyers, typically from out of state, where, again, there's very minimal damages that are incurred by the customer but yet they're seeking a settlement in the neighborhood of \$25,000 or \$50,000, or pick a figure. So, these are areas where businesses are adversely impacted by the actions of class action lawsuits. I would note that, in many cases, these involve foreign actors who are causing problems-- the hackers or the bad actors-- no matter how many protective measures the business may take. With that, I'd yield the rest of my time to the chair, and look forward to the discussion.

FREDRICKSON: Thank you, Senator Hallstrom. Mr. Clerk for an amendment.

CLERK: Thank you, Mr. President. Senator Conrad would move to amend the bill with AM246.

FREDRICKSON: Senator Conrad, you're recognized to open.

CONRAD: Thank you, Mr. President. And good morning, colleagues. This is a serious and substantive amendment that I was working on late last night in preparation for floor debate today, and appreciate Bill Drafters turning it around so quickly. I'm guessing that we're probably going to spend a considerable amount of time on LB241, so there's always kind of a competing strate-- strategic decision to be had when you're approaching a measure that you find objectionable. One, to try and kill it outright or, perhaps a more constructive path, to try and make, quote, unquote, a bad bill better. And before we get further into the debate-- and I know we're going to talk about a lot of things, from referencing shenanigans to the ongoing pattern and practice this year in this Legislature to put their thumb on the scale in favor of special protections and immunities and payouts to big corporations at the expense of everyday working Nebraska families and consumers, which this bill is ju-- yet another, another example of. We'll also have an

opportunity to talk about current protections guarding against frivolous actions that exist in Nebraska law and that can fine Nebraska lawyers. We'll also be talking about the purpose for bringing forward class action litigation for a variety of different purposes, and we'll be talking about the broader issues related to cybersecurity and cyber threats as well. In looking at Senator Hallstrom's bill, I did want to at least find an area of existing law that we could perhaps tie to to ensure that those aspects are harmonized, and kind of a, a first attempt of that is before you in AM246. And before we go much more deep into some of those themes and some of those issues that are present in LB241 and I think worthy of deliberation, let me start by saying what I've already mentioned to my friend Senator Hallstrom privately: I'm very grateful that Senator Hallstrom has joined our body. He brings a considerable amount of expertise on legal issues and regulatory issues impacting commercial entities, and he has spent a great deal of time in this body before he became a member, working in good faith in an always professional manner to try and advance those interests. That is important and legitimate work, and I've always appreciated working with Senator Hallstrom over the years in his prior role, and I'm glad that he's a colleague in the Legislature today. In many instances, we're able to find a lot of common ground to work together to figure out how to remove red tape or how to unleash economic liberty and to provide a better posture for business activity in Nebraska. But sometimes we're not able to find a consensus or agreement because we'll see a divergence in, in some of the values that, that we bring to the table. And I appreciate Senator Hallstrom's quick thinking and great sense of humor, and I think that will serve us well when we do hit these areas where we're not able to achieve a meeting of the minds, so to speak. So I respect that Senator Hallstrom has a very consistent track record in support of advancing the interests of Nebraska business. This is one instance, however, where it comes at the expense of Nebraska consumers. And my track record in this body-- and outside, as a civil rights attorney-- has really focused on consumer protection and standing up for working families and ensuring access to justice when Nebraskans are harmed, either by their government or by corporate entities. So there's going to be a few of these instances where we're, we're just going to have different legitimate perspectives as we approach the measure before us, but it does not in any way negatively impact my collegiality, care, and respect for Senator Hallstrom, and I look forward to a, a great debate with him on this issue and, and many more issues, I think, that we'll have this year and in subsequent Legislatures. So at its heart, this bill protects private companies from being held accountable for their negligence when it comes to cybersecurity events. And specifically, this would prevent private

companies being subject to class action lawsuits for negligence when they would allow unauthorized access to our personal information or allow disruption of information systems. So let's kind of break this down a little bit more. Yes, indeed, there would still be an access to justice through class action litigation in state courts at a higher burden of proof, but it would truly remove an opportunity for Nebraska consumers who are harmed through negligent acts of corporations from seeking the same redress in a class action case that was brought in Nebraska courts. And-- but-- I know this can be kind of dry, academic legalities, but let's kind of break it down to how it impacts everyday Nebraskans. If I'm a Nebraskan who is harmed by a cybersecurity event or a data breach where the entity-- the corporate entity responsible for such, whether they acted grossly negligent or negligently, I am harmed the same. An everyday Nebraskan is, is harmed the same whether or not the corporation acted negligently or grossly negligent. They suffer the same sort of risk and impact, and that's really where we should keep a primary focus. Additionally, I was a little confused during my friend Senator Hallstrom's opening about-- on the one hand, he seemed to indicate that individual cases would still be able to be brought forward under the traditional negligence standard and not subject to this higher burden of proof, but he also talked about how we need to remove class action cases from the court's docket because they clog up too much of the court's docket. Friends, that, that actually-- that just doesn't make sense when it comes to judicial efficiency. Class action cases themselves were developed to promote judicial efficiency. And so when we allow individual claimants to pool their resources and come together, A, they may be more likely to find counsel and pursue a case than they would be able to on their own, and it-- class action lawsuits actually promote judicial efficien-- efficiency by taking up all of those what otherwise would be discrete individual claims into an aggregate case so that the court is only dealing with one case instead of hundreds or thousands of cases, as would be the case for Nebraskans who are impacted negatively by cybersecurity events and dissemination of their private information. Additionally, if you look at the text of LB241, you can see that this is a very, very broad bill. It provides special protections, a sweetheart deal to not only corporations but also religious entities, charitable organizations, a variety of associations, partnerships, LLCs, LLPs, et cetera, and other private business entities, whether organized for profit or not. So let me stop right there because I think this is important to point out as well. And we've started to see this in some aspects before the Legislature this year, but here's yet again another example. This is a broad measure impacting civil practice and consumer rights in Nebraska. It should be before the Judiciary Committee. It is absolutely out of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

alignment with our practice in this Legislature to send a major bill impacting civil practice to the Banking Committee. But we know why that happened. We know that the Executive Committee [SIC] is stacked and we know that the Banking Committee is more likely to push out this measure than the Judiciary Committee due to committee makeup. I'm hoping some friends on the Executive Committee [SIC] will actually weigh in on that because-- much like the hemp regulation bill, where we've seen interference by the Attorney General or we've seen shenanigans happen with our practice in Referencing, this is yet another example of how norms and tradition and usage in this body is being bent at all costs to give a benefit to the largest corporations and to evade criticism or opposition. We'll at some point--

FREDRICKSON: That's your time, Senator.

CONRAD: Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. Turning to the queue. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. And good morning, colleagues. I do rise today in favor of AM246 and opposed to LB241. Before I get into some of the reasons for that, I do want to clarify. I do sit on the Banking, Commerce and Insurance Committee and was not in support of this bill. This gets into a conversation we had, I think, earlier in the session about what does present, not voting mean, but I was there at the exec session and specifically did not vote for this bill. So while there were seven individuals on that committee that voted this out, there was one who did not, and that was me. The present, not voting does, I think, broadcast a different message sometimes than "no," but certainly it sends the clear message that I am not in support of this bill. Senator Conrad I think did a really good job of kicking off the really good conversation that I think we need to have here today with regards to this bill, but I want to start by situating my opposition in sort of the broader perspective of why I think these pieces of legislation can be harmful and why it is important that we push back on them. Access to our court system is fundamental when it comes to your right both as a United States citizen and also as a Nebraskan. We have in our Nebraskan Constitution the right to access your courts to ensure that your rights are protected by a judge in both criminal but also civil matters. And for time immemorial, even before we were a state or a country and when we were simply territories, one of the most fundamental sources of recourse that you had if somebody wronged you, if somebody, somebody messed up and, and harmed you in some way was to go to the courts. And what I think is very, very

important is that we always make sure we are focusing on the everyday Nebraskans who experience harm, who are wronged from time to time by both individuals and, yes, by companies or by corporations. And anything that we do as a Legislature in an effort to limit or, or further restrict access to those courts, I think we have to have a really good reason. And when I sat through this hearing and I listened to some of the proponents talking about the reasons they needed this, I understood kind of where they were coming from, but I, I do not think that I ever heard a good reason for why we, as a State Legislature, as Senator Conrad put it, should be putting our thumb on the scale of the justice system and saying that we do or do not think that certain individuals deserve that access to recourse. And our friends who came in in opposition I think made a really good point that this bill does limit that access for the everyday Nebraskan. So that, that is, I think, my fundamental opposition. I want to get a little bit more into the details of this, this legislation, and I will likely punch in to continue to make sure I have that, that time to talk about the actual opposition that I have. But at the heart of it, what you're going to see folks in opposition here today pushing back on, I imagine, is this idea that Nebraskans don't get to have their voices heard. And in a season of political discourse where we continue to hear the second house have their voice restricted, I think that this piece of legislation is yet another step in that creep towards allowing individuals to be heard, and it's a, it's a creep towards, I think, just limiting access to free speech and access to recourse. This bill seeks to change the level of-- the burden of proof necessary for a class action lawsuit in these cybersecurity events. These cybersecurity events are not rare. How, how often have we heard about individuals having their passwords stolen or, you know, banks have accidentally had a breach? We get emails about that all the time. I get emails about that on a regular basis, both personally and professionally, hearing that banks or other corporations or entities have had these cybersecurity breaches. This is not an uncommon event. This seeks to raise the level-- this is the burden of proof-- from negligent to gross and wanton negligence. And colleagues, that is not a small change. What that does is it seeks to raise the level of the, the burden of proof needed to prove these cases to such a high level that you essentially have to show that these actors were just so blatantly and intentionally reckless that these cybersecurity events happened. I hope that some of the other colleagues in here will, will dig in a little bit more as to the definitions of what is negligent versus that gross and wanton negligence. I certainly will keep talking about it, but this really does seek to protect those actors. And again, colleagues, we should not be in the business of limiting Nebraskans' access to recourse when they

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

have been harmed. And I, I, I understand this is a technical bill, and I think we're going to kind of get into more of those specifics, but I do have concerns about what this bill speaks to and which direction we're moving. So with that, I will punch in and probably talk a little bit more about the specifics. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Dungan. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. Well, I was rising in opposition to LB241. I'm not sure where I'm at on AM246 yet, and I don't know if AM246 were adopted if it would change my position on LB241, so I'm going to have to look at it a little bit more. I appreciate Senator Conrad's constructive approach to things and-- so it's just going to take me a little bit more time to know where I stand on that. But I'm going to talk about LB241. And I appreciate always Senator Dungan segueing right into what I was going-- wanting to talk about, which is the distinction between negligence and gross negligence. And I wonder if Senator Hallstrom would answer a question.

FREDRICKSON: Senator Hallstrom, will you yield?

HALLSTROM: Certainly.

J. CAVANAUGH: Thank you, Senator Hallstrom. And always a pleasure to get to have a, a very technical conversation so, in your introduction, you said that the banks are still going to be held to a reasonableness standard. So what, what is negligence?

HALLSTROM: Just for clarification, I did not say anything about banks other than the entities that had testified. This is a, a broader bill with regard to all types of businesses, both "corporated" and incorporated and those that are not for profit and for profit.

J. CAVANAUGH: I apologize. Sometimes we hear what we-- you know, our own bias. In my mind, I've been thinking about this as a, a bank bill, but you-- I appreciate that distinction. But so, so you did say that these entities would still be held to-- their behavior would need to be reasonable. Is that what you said in your opening?

HALLSTROM: Yes. And thank you, Senator. And in response to your question, the, the standard of Nebraska civil jury instructions-- which might be helpful to your, to your question-- negligence is doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful

person would do under similar circumstances. And the distinction-- if I might take just a moment-- I don't want to bleed into your time, but--

J. CAVANAUGH: Please.

HALLSTROM: The Nebraska civil jury instructions for gross negligence-- which may be helpful for the discussion-- gross negligence, according to the Nebraska Supreme Court in Coburn v. Reiser, gross negligence is great or excessive negligence which indicates the absence of even slight care in the performance of a duty.

J. CAVANAUGH: OK. I appreciate that. Thank you for clarifying that. So my question is, in your introduction, you said that the banks, banks-- these entities would still be held to a reasonable standard. And you just said that the jury instruction definition of negligence means acting as a reasonable person would. So how do you kind of square those two things saying they're still going to be held to reasonableness but we're taking away the requirement that they be held to a reasonable person standard?

HALLSTROM: Well, I would go back and try to check and see what I, what I might have said. What, what I intend to, to portray here is that, in this particular area, even with the existence of reasonable precautions-- patches, updates, things that are taken care of by businesses on a regular and routine basis-- that they still face hackers and ransomwares. The bad actors are always a step ahead of them. I think Senator Conrad indicated it's always hard to catch up the law to technology. In this case, I twist that just slightly. It's always hard to keep up with the bad actors who are always going to stay a step ahead of you. We have zero-day events that occur, and, and those are situations that, no matter what the entities have done in terms of precautions, there's still the basis for, for a hack to occur.

J. CAVANAUGH: Thank you, Senator Hallstrom. Well, I, I would certainly suggest-- I-- maybe I misheard you as well that, that these entities are not going to be held to a reasonableness standard. But if you check your notes-- and you can correct me later, but-- so here's my ultimate issue with the bill as written-- and I'm going to run out of time, so I'll push my light-- is-- removing negligence, as Senator Hallstrom laid out, is the standard of a reasonable person, how a reasonable person would act in this situation. And I have real reservations with eliminating a requirement that these entities that have my Social Security number, my driver's license number, my address, my bank account number-- all of these private information that can be used detrimentally against me-- are not going to be held to act reasonably.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

They are only going to be liable in these specific instances. And we can get into the de-- details about the difference between class action and a-- an individual suit, but-- that in these class action instances, they are only going to be held accountable if they act with disregard for reasonableness, active disregard or-- for how a reasonable person would act. That just doesn't seem like a good idea. We should expect them to act reasonable. As, as Senator Hallstrom pointed out, acting reasonably does not mean you are not going to be a victim.

FREDRICKSON: That's your time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Cavanaugh. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. And thank you to my colleagues who've had a chance to weigh in here already. And I'm glad that Senator Cavanaugh lifted up perhaps a, a misunderstanding that I also marked down from Senator Hallstrom's opening, where he sought to provide assurance to the body that all of these entities, private corporations, nonprofits, et cetera, would still have to act reasonably when they are utilizing our personal private information. And in fact, colleagues, that, that, that, that does not square with the legislation itself. And I, I really, really appreciate Senator Hallstrom lifting up the jury is-- instructions to provide concrete examples of some of the differences that we're looking at for a straight negligence case versus a gross negligence case. And perhaps he misspoke in his open, and goodness knows I've done that many times, so. There will always be an opportunity to correct the record in that regard. But it really actually goes to, to the heart of this. We should expect corporations who utilize our personal, private information to act reasonably. We should. And if we can find agreement in that regard, we, we shouldn't move LB241 forward. I appreciate and understand some of the concerns that Senator Hallstrom brought up about sometimes a private entity or a small business or a small nonprofit or a church or even, you know, a big company can do everything right, can have all of the measures in place to try and guard against a cyber attack. And indeed, sometimes that may still happen, and that can be very unfortunate. So while we're all sympathetic to that fact pattern, that-- that's not what's going on in LB241. LB241 says that if those same entities do not act reasonably, they're going to get a pass from a class action in state court. So while we want to ensure that there is some sort of level of understanding and empathy for entities that are indeed trying to do everything right, this bill actually goes and undercuts that policy

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

objective. So I think that, that we need to think very carefully about it. I would also ask my friend Senator Hallstrom, either on the record or rhetorically-- he lifted up some other reasons for why we need to move this legislation forward. And I can tell you, talking to small businesses in my district, the ever-rising cost of insurance, but particularly cyber insurance, is something that many business owners, large and small in Nebraska, are rightly concerned about. So in those other states where there have been sweetheart deals provided to corporations when their customers and consumer data is "misutilized," have the cyber insurance rates go-- gone down in those other jurisdictions? I would venture to say they have not, and so that would be easily ascertainable and would undercut one of the stated policy goals for this legislation. I know that Senator Hallstrom also rattled off a host of statistics in regards to the rise in litigation surrounding cyber events, and I think that is eye-opening and compelling to see the exponential growth in cases like this as, again, we move more of our lives and business online and our personal data is ever more vulnerable to these kinds of attacks. But-- and I know we only have such limited time on the mic, so sometimes it's hard to, to really drill down to the details. But in regards to those statistics, does tho-- do those statistics relate to class actions in state court? Because that's the subject of this bill. If we're actually just talking about litigation surrounding cybersecurity events, that's perhaps a different story. Or if we're looking at what's happening in the federal courts, that's beyond the jurisdiction of this measure as well. So I would want to know about whether or not there was a positive correlation to reduce cyber insurance rates for businesses and entities if measures like this move forward. And I would like to know specific examples as to whether or not there have been a proliferation of negligence-based class action lawsuits in Nebraska under the present legal framework. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I am opposed to LB241, and I think it's important that we broaden the conversation. See, honestly speaking, this bill probably wouldn't even be on the floor had it been referenced to the correct committee. This bill shouldn't have went to the Banking Committee, because of this conversation. This bill should have went to Judiciary, and that is the problem. It probably would not even be on the floor. But it got referenced to Banking, and that's why we're here today. It should have got referenced to Judiciary. But now we're having a conversation about the other problem that we've been facing this session: more bills about protecting corporations and not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

protecting people. And that is a fundamental issue. We are supposed to be elected to, you know, serve the people of Nebraska, work for the people of Nebraska, serve the second house of Nebraska, but too often this session we've come across different pieces of legislation that are not geared towards that. It's protections of corporations who might be negligent, that might have done something that caused these breaches to happen. And the argument that, oh, there's no money attached to this-- but if my Social Security and my information is floating across the internet, across the dark web, somebody should be held accountable. So if these corporations or if these companies or private entities are negligent, they should be held accountable for these cybersecurity events. If we're providing them with this information, they should be held accountable. That is the issue. But the bigger issue is it shouldn't even be on the floor. But it got referenced to a committee it shouldn't have got referenced to. It shouldn't have went to Banking. It should have went to Judiciary. And that is a problem. But we're here today, so let's talk about today. And today, we're having a conversation about protecting corporations again. Why? What is the point? Because it is blatantly obvious to me this session that, although we hear many claims of caring about the people of Nebraska, that the people of Nebraska are not cared about as much as advertised. It's very sad. You know? I'm reading through committee statements and looking at all the people who were proponents of this bill. Huh. Wasn't the people of Nebraska. It's very interesting. So a private entity would have to show willful, wanton, and gross negligence on the part of themselves, I guess. I guess somebody will get up and explain an example of willful, wanton, and gross negligence on the part of a private entity for us to get further clarification. But why does it have to be willful? Why does it have to be wanton? And why does it have to be gross negligence? If they're negligent, they're negligent. And just giving them immunity to be negligent is just wild to me, that these companies can be negligent and can just be loosey-goosey with our information. And as long as they just don't outright just say, hey, Terrell's information is right here, they get away with it. Does nobody see a problem with that? Your information can be neglig-- negligently shared and there is no liability, and that is a problem. And I don't see why more people are not standing up and saying, hold on. But I say this almost every day, and I might be a-- what is it-- a, you know, a repeating record? You know. But it is what it is. But this should have went to the Judiciary Committee, then it wouldn't be on the floor. Thank you.

FREDRICKSON: Thank you, Senator McKinney. Senator Clements, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

CLEMENTS: Thank you, Mr. President. Cybersecurity is a, a big risk, and especially for small businesses like mine. I'm a small-town banker here in Nebraska and-- very concerned about protecting the privacy of my customers' data. We've worked hard and spent a lot of money doing it. We've had trouble recently even finding insurance coverage against cyber breaches. We do have the coverage, but it's many thousands of dollars now. It's getting higher, very hard to find. Even though we've never had a breach and we've worked very hard to protect our data, it doesn't automatically review-- new. Our policy gets canceled every year, and we have to then recertify that we have multiple password IDs and multiple ways to protect our systems that we train our employees. We have a military-grade firewall that tries to keep everybody out. And now that we have a military-grade firewall in the computer that I own, the business I own, I can't get on Facebook. I can't go to huskers.com or ESPN. It locks me out of most anything I would want to do, but that-- so that we're trying to protect our, our data that way. But still, we get email phishing attempts that are really tricky anymore. They try-- send our employees emails trying to get them to click on something and-- looking for a backdoor into our data. And even though-- you know, we're, we're really trying hard. If, if it-- if we did have a breach, I think we could probably face a lawsuit in the millions of dollars and it could shut down my business and any-- and a lot of other small businesses who are out here really trying to protect their data. Our reputation is probably our most valuable asset in a small town, and we definitely have always respected the privacy of our businesses' data. But there's only so much you can do, and things do happen. And if a breach happened, I would hope that it would be considered that I've done my best. But I could see where some attorney could try to say that I was negligent because of one thing I didn't think of as to-- or how to protect a new attacker from getting into our data. So I'm strongly in favor of LB241. Not sure about LB-- AM246 I don't believe is friendly. And I do believe this is an important step for protecting especially small businesses in Nebraska that are trying, with the resources we have, to protect all of our customers' data and be good citizens. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Clements. Senator Sorrentino, you're recognized to speak.

SORRENTINO: Thank you, Mr. President. I rise this morning in support of LB241, in particular, pages-- page 2, lines 30 to 31, as well as page 3, line 1 regarding the gross negligence clause. Corporations are not evil. Corporations create jobs. Jobs allow Nebraskans to live the lifestyle that they do. There is a logical nexus between why we have a 2% unemployment rate and the legislation that we pass here. The

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

requirement in this bill is that class action lawsuits-- I want to emphasize class action, not an action I bring as an individual against a corporation or a third-party-- class action lawsuits against a private entity and requires that the standard of negligence that applies is gross negligence as opposed to ordinary negligence. Gross negligence is the typical and common standard in nearly every business contract that I have been a part of in 40 years of practicing law. Indeed, I would never, ever let one of my clients sign a contract where there was an indemnification clause-- an indemnification clause lays out the responsibilities of both parties. It needs to be mutual. Can't be one-sided. Nobody uses ordinary negligence. It gives way to nitpicking lawsuits that could easily be discharged in administrative hearings, dispute resolution. The courts are not friendly for either plaintiffs or defendants. They are very profitable for the attorneys. The attorneys have no say in this law. We're 49 legislators that do have to do right by the state. If held correctly, if legislated correctly, if "lawyered" correctly, this is a fair law. I would say that, given the fact that-- as I think Senator Conrad may have said-- hackers are usually two steps ahead of the third parties, despite the efforts, as some of the other senators said, to do the right thing, to spend a lot of money-- these kind of hacks happen, they're bad. And lawsuits-- and class action lawsuits are simply the best way to do it if and only if there is a breach that was caused by the negligence, reckless disregard, gross negligence of that third party. I think that is very, very rare. I think, in the interest of serving the people of Nebraska, we need to think real hard about what we're doing if we say no to this bill. I yield the rest of my time to the chair. Thank you.

FREDRICKSON: Thank you, Senator Sorrentino. Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. Good morning, Nebraskans. And good morning, colleagues. I was reading over the agenda a couple days ago, and, and this bill came up as a flag for me, not because I'm an expert in, you know, law or whether something's gross negligence or negligence or gross wanton negligence-- which I was googling with curiosity and interest just ten minutes ago-- but because of the pattern of chipping away at consumer protections in this country. And how can you look at the bigger picture of what's happening right now in the United States of America and think it's a good idea for anybody at the state and local level to continue chipping away at consumer protections when we know that we're getting to a point where, at the state and local level, that's going to be the backstop that we have to protect consumers? What worries me is seeing victims left without recourse, having their personal data stolen, medical records, passwords, and having no ability

to hold the company responsible. I think it's plausible that there will be more security challenges and more security breaches in the future and that the risk of corporate negligence is going to go up as time goes by because we are more reliant on tech, we're more reliant on any kind of data-driven technology than we ever have been in the past. And that's not going to go the other way. And it's going to always be a really easy target for bad actors who want to exploit the most valuable thing that anybody's-- any of us have, which is our data. All these services we get that are free or low-cost, you are the product, colleagues. The-- your data is the product, and that's why it's so valuable and so important to protect. And this push to weaken accountability for corporations-- you know, I'm not-- no one's saying corporations are evil or bad. Could say that, but I haven't heard anybody say that on the floor in the Legislature today. It's not that corporations are evil and bad, Senator Sorrentino, it's that they need to have accountability. And this push to weaken accountability for corporations isn't just happening in Nebraska. It's part of a broader national effort to roll back consumer rights. We should all be concerned that, at the federal level, lawmakers are attempting to shut down the Consumer Financial Protection Bureau, the CFPB. That's the agency that's responsible for protecting Americans from predatory financial practices, from fraud, from data abuse. Since 2010, when, when it was formed, they've held major banks and corporations accountable for fraud and for breaches of data, like what is contemplated in LB241. And now corporate interests are working at the federal level and apparently too at the state level to dismantle consumer protections and make it harder for ordinary people to fight back when they're harmed. And LB241 is Nebraska's version of that same corporate giveaway, making it easier for companies to neglect cybersecurity without fear of consequences. Any time we make it harder for citizens to take legal action, to have their rights, their data, their information protected, what we're really doing is putting a tax on those consumers and saying, yeah, we can enforce the law for you if you can afford an attorney, if you can hire the right person to defend you in court. So to me, that's not really an acceptable remedy. What we should do is punish the bad actors in big tech and these corporations that are not protecting consumer data. We shouldn't punish the consumers by making them pay to have the law enforced for them. If we weaken the liability of corporations when it comes to data breaches, what we're doing is we're eliminating the incentives for companies to take cybersecurity seriously. And our job, the government's job and our job as stewards of that work, is to protect the people, to stand up for the people, to make it easier for them to defend themselves, not to provide a legal shield for corporations that fail to safeguard user

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

data. We need to be strengthening consumer protections, not gutting them. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Hunt. Senator Hallstrom, you're recognized to speak.

HALLSTROM: Thank you, Mr. President. As I listen to the debate, I think back to the 1980 Reagan-Carter debate. There you go again. Senator Conrad's indicated this is about the expense of consumers harmed. The reality in this arena is that there are very limited and minimal-- as I noted in my opening remarks-- actual monetary damages that are sustained by consumers. I just got some data, information regarding some high-profile class action lawsuits in this area. Equifax involved a \$380 million settlement, \$2.58 was the per class member damages that were sustained, and the attorneys got \$77.5 million. Yahoo, \$117.5 million, damages of \$0.61 per member, and the, the lawyers got \$22.763 million. Anthem, \$115 million settlement; \$37.950 million, \$3 per member damage. Home Depot, \$27.2 million-- almost half of that was attorney fees-- \$0.52 in damages per member. Target, \$10 million; 30% attorney fee award of \$3 million, \$10 per member damages. And LendingTree, \$875,000 settlement, almost \$300,000 in attorney fees, and \$12.65 in damages per member. That data ranges from \$0.50 to \$12.65 in damages. So we have a scenario or a situation here in which businesses are doing everything that they can to protect that consumer data, whether that's obtaining insurance or making patches and upgrades to the system, and yet we have hackers that are able to stay a step ahead. Many of these breaches occur due to issues with software or firmware, which is generally outside the control of the company. If we look at what, what we refer to as zero-day events, there are malicious actors or hackers who exploit previously unknown vulnerabilities in software or hardware. Businesses can be completely diligent in keeping up with their patches and upgrades, and yet the ability to control or avoid those issues are out of the control of the business. I think also with regard to the gross negligence standard, when we look at the statutes-- I did, I did probably two to three minutes of review of the statutes, googling the words "gross negligence," "willful and wanton conduct." And just to go through the list, 28-470, regarding the administration of an Naloxone-- that is the standard that applies, and the same standard applies in the area of school employees for school-- school-- or, student seizure dish-- disorders under 79-3206. We have similar provisions under the Nebraska Agritourism Protection Act, under site selection provisions, state officials indemnity, mediator indemnity, free clinic volunteers, nonprofit directors and officers, equine activities, tampering with anhydrous ammonia equipment, caring for mentally ill persons, conducting alcohol blood tests in connection with

vehicle or boating incidents involving DUIs, investigations and reports for adult protective services, volunteer firefighters, landowner liability for dangerous conditions, impaired practitioners, so on and so forth. The bottom line is that each and every one of those standards from my experience has been placed in the statute at the request of the trial lawyers. When an immunity is proposed-- an absolute immunity, the language that we use consistently-- and the statutes are replete with references to the gross negligence and willful and wanton misconduct or conduct. So with that, thank you. And I'd yield the rest of my time.

FREDRICKSON: Thank you, Senator Hallstrom. Senator Machaela Cavanaugh and I would like to announce the following guests that are visiting the Legislature: 80 fourth grade students from Paddock Road Elementary and Prairie Lane Elementary in Omaha in the north balcony. Please stand and be recognized by your Nebraska Legislature. Returning to the queue. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. That was the most polite group of people. You all said thank you when we clap. No one's ever done that before. You all are wonderful. Thank you for being here. Mr. President, I rise again in opposition to LB241, and I, I wanted to talk a little bit more-- because I got cut off earlier time-wise-- about a couple of points that I wanted to make. One of those is, at the committee hearing, what we heard over and over again was the purpose of this legislation was to dissuade so-called frivolous lawsuits, right? It was this idea that there is some onslaught of class action lawsuits being brought against companies or organizations and that the companies are then so buried by the onslaught of frivolous litigation that they have to settle, cases that they're telling us they absolutely would have won, but they have to settle because they just can't possibly handle all of it. What I pointed out-- what I think is really interesting-- is this bill does nothing to fix that. This bill just raises that, that standard of proof, according to Senator Hallstrom, and in doing so does not prohibit anybody from bringing those lawsuits. They simply would make a separate allegation. So even if you're-- let's assume, *arguendo*, that, you know, you're correct, that people would not be successful with this burden of proof that you would be otherwise, it doesn't prohibit anybody from bringing the suit and just simply alleging that you are now grossly negligent instead of negligent. You could still do that and make an effort to try to have a, a litany of class action lawsuits that would require settlement by the companies. And so if the actual stated purpose of this bill is to dissuade lawsuits from being brought, it doesn't achieve that goal. What I think the actual purpose of this lawsuit is is to make it harder to recover or to find people liable in circumstances where they have clearly breached a duty to the

public that they're supposed to uphold. It's been talked about a couple times now, but I want to be very clear. There is a vast difference between gross negligence and simple negligence. Negligence requires a duty to an individual, a breach of that duty, and then a causation between that breach, and then the damages. As Senator Clements said, and as others have said, if you are a reasonable actor in the world, if you have a company, if you have a bank, if you have a credit union, whatever, and you're doing what you're supposed to do in order to even make an effort to protect your customers' private data, you've satisfied the requirements probably needed of you in order to not breach that duty you have to your customers. The only circumstances in which somebody is going to find you liable for, for not doing your job, for being negligent with somebody's personal biometric data are circumstances where you in fact did breach that duty by not doing your job. And those are the people that this is designed to hold accountable. Senator Hunt I think made the really good point. This is about accountability. I, I agree. Corporations are, are good. We need organizations to provide jobs for people. But in the event that they're not doing their job by protecting your data, we should have to hold them liable. Gross negligence requires a showing that a party is indifferent to the, the safety or the protection of others. Willful and wanton negligence requires the showing that that offending party knew or should have known that their actions were likely to cause the, the injury or the outcome. This is an incredibly high standard. And when we listen to the trial attorneys who came in and testified at this hearing, they indicated to us that it's going to be almost impossible to find that somebody was negligent to that higher standard, that gross negligent, just by virtue of what's required by the Nebraska courts in order to find that. I did a very short search of some examples of these class action lawsuits for breach of, of data. I know we think oftentimes about things like passwords or potentially Social Security numbers or bank information, but it goes broader than that. In 2023, there was a, a lawsuit brought against Whole Foods-- and by the way, I love Whole Foods. I'm not trying to say I don't-- where there was an allegation by the plaintiffs that the grocery store was unlawfully collecting voice prints from their employees, that the company was requiring the usage of certain headsets but that, in doing so, they failed to disclose that they were collecting the voice prints of the people working for them and then did not have a, a proper care taken to not have hackers get in and steal those voice prints and potentially defraud those, those employees. I mean, this is a whole new frontier that we're talking about. And when we're talking about a frontier of technology, I think we should be taking more care to ensure that individuals have their-- not just data, but their biometrics protected.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

And in, in raising the standard for whether or not a company is, is going to be held liable for that I think is problematic. So again, this, this new standard they're using for this gross, wanton, willful negligence, it is incredibly difficult to meet. And in the event that a company is breaching their duty of care to their customers, I don't think we should necessarily be making that harder for people to hold them accountable. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Dungan. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. I'm more of an Aldi guy, Senator Dungan. And I am afraid of biometrics being captured. But-- so I, I rise again in, in opposition to LB241. And still thinking through AM246. I wonder if Senator Hallstrom would answer another question from me.

FREDRICKSON: Senator Hallstrom, will you yield?

HALLSTROM: Yes.

J. CAVANAUGH: Thank you for the previous conversation, Senator Hallstrom, and, and your continued conversation on this. On the last time on the mic, you went through a, a litany of court cases and how much the plaintiff's lawyers stood to make. Do you have that same list of all the-- how much the defense attorneys made in all those cases?

HALLSTROM: Well, I guess-- I, I, I do not. But whatever the defense attorneys made was at the expense of the businesses who were sued.

J. CAVANAUGH: OK. Thank you. I, I guess my thought on that is-- you know, we're talking about individuals here. And my concern about this bill is that it puts individuals in a weaker position to protect their rights and their, their data and that there are, of course, lawyers who make money in these cases. But the bill is about the standard that these entities-- businesses and apparently some nonprofits-- are held to for their obligation toward their customers or their members. And that's my concern about what this bill addresses. It doesn't address how much people can get in these fees and things like that. It just sort of is attempting to create an environment in which people wouldn't assert their, their rights. I do also have concerns about the-- just the overall intention of this bill. So what the bill does is it raises the, the standard for class action. So if you are a member of a class-- so, like, a group of people who is harmed-- you have to prove willful or wa-- what was it? Wanton-- I'm trying to remember what the word

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

was-- gross negligence. Sorry. You'd have to prove gross negligence was the cause of your data being released. But if you're an individual, you can file suit against the-- these entities. Then you only have to prove negligence. So I, I, I don't understand if the interest is efficiency of the courts or the interest is not clogging up the courts and, of course, if the interest is cutting down on legal fees, I don't understand how creating an environment where people are going to be driven into filing individual cases as opposed to classes is-- serves that goal. It seems to me that what the point of this bill does is it tells these entities-- many of them banks-- which is what I keep saying-- but not onl-- exclusively banks-- that they don't have to use reasonable care in the preservation of your data. I heard Senator Clements talk about all of the things that they do. And it sounds to me like Senator Clements is holding himself, his bank to that standard, what is reasonable, and maybe going above and beyond that, which is great. And that's what we want. And, of course, what I was trying to say the last time before I ran out of time was, data breaches happen; no one can prevent them. You know, the-- if somebody wants to get your data, they're going to get it. And whether it is military-grade technology, it, it is still susceptible. Of course, the weakest link is the human factor. But that-- so just because you are using reasonable care does not mean the data is not going to get breached. But if you're not using reasonable care, it's a lot easier. A lot more data's going to get breached a lot more often. And so that's why it's important that we hold entities who have this information to that standard of reasonableness. And as I'm going about to run out of time, I was just going to address-- Senator Sorrentino pointed out that every contract he's ever been party to or advised on uses the gross negligence standard. And that's fantastic, because that is a voluntarily entered agreement between two parties. And we should allow parties to make those sorts of determinations when they are entering into a contract, much like my, my opposition to the ride share bill, where I was concerned that it would preclude parties from entering into a contract of their choosing of how that relationship was. So this, again, is putting in statute a weakening of the position of the people who are, are already in a weaker position for negotiations. You don't have a lot of choices in terms of what you're using for data, for banking, for medical care, for all those things. And so if those entities do not have to use reasonable care and they're the only offer in the market, you are going to be stuck with an unreasonable maintenance of your data. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator John Cavanaugh. Senator McKinney, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

McKINNEY: Thank you, Mr. President. Still opposed to this bill because this bill is not protecting the people. And that's what we were elected to do, was protect the people of Nebraska, serve the people of Nebraska. But this isn't doing that, and I have problems with that. Why shouldn't companies that are negligent be liable? Why shouldn't they be held accountable? Why should my information be shared on the internet negligently and nobody be held accountable? Makes no sense to me. If a company does something negligent, they should be held accountable. Why does it have to reach gross negligence? If they're negligent, they're negligent. And that is the issue that we're facing here today, that we're saying raise the standard, that the people have to show that companies were grossly negligent in allowing these breaches or whatever. There's many ways these things can happen. You know, somebody could leave a laptop open. Somebody could leave a laptop open, somebody could just share something they're not supposed to, forward a email. All type of things could happen that is negligent. It doesn't even have to be grossly negligent. It's just negligent that allows these breaches to happen. But under this bill, it doesn't matter. People won't be protected. And that's all, you know, these-- if, if we're protect-- we're trying to protect these companies from these hackers or these-- whoever they are, what about the people? Who are we protecting them from? Because a company can be negligent-- and hackers are very creative, and they can get in because a company was negligent, get all my information, share it on the dark web or the internet and utilize it however they want, and I'm just supposed to deal with it. My information is just out there. Nobody's problem but my problem. Then I have to figure out how do I get all of my information back off the internet, and that's expensive. So when you talk about, oh, there's no money-- there's no, there's no financial harm to the people when this happens, yes, there is. Because to get your data off the internet, that costs something, and a lot of people don't have it. So there, there is a cost to the people to get your data off the internet. It's not that easy, and it's not even that simple. You got to go through all these type of com-- other companies that you hope are not being negligent again. You see the problem here? It is a cost to the people. It is going to cost something, if a company is negligent, to get your data off the internet. But nope. It doesn't matter if this bill passes, because they-- you have to figure out if they were grossly negligent. If they're-- if they weren't grossly negligent, the company will not be held accountable. Does that make sense? If you're watching today, ask yourself, does it make sense that a company can be negligent, your information ends up on the internet, and they not be held accountable? Ask yourself, does that make any sense? There is no accountability. But if LB241 passes, there will be-- I guess you could say there is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

accountability if you could say there were willful, wanton, and gross negligence, but you're raising the standard. Why, why can't we just show that they were negligent? Should the standard be raised for negligent companies is the question that is being asked today. And if you, like me, think no, then you should reach out to your senator. Thank you.

FREDRICKSON: Thank you, Senator McKinney. Senator Spivey would like to recognize the following guests in the Legislature: participants from Eastern Nebraska Community Action Partnership's Senior Longevity Program from Omaha in the north balcony. Please rise and be recognized by your Nebraska Legislature. Returning to the queue. Senator Guereca, you're recognized.

GUERECA: Thank you. I yield my time to Senator Conrad.

FREDRICKSON: Senator Conrad.

CONRAD: Thank you, Senator. And thank you, Mr. President. I want to extend my warm welcome to Senator Sorrentino as well. I can tell he's going to become a fast friend in our legislative work together, and I really appreciate the business law expertise that he also contributes to our debate and dialogue on important issues. But I do want to push back on his analysis or perhaps overly broad assessment of opponents' arguments. I don't think anyone who has stood up on this bill has said that corporations are evil, and I think it absolutely forgets the fact that Nebraska consistently has one of the strongest environments in place to allow businesses to flourish and succeed. We consistently rank at the top of those lists because of legal and regulatory landscapes that are present, amongst a host of other positive factors wherein Nebraska is consistently rated as one of the, the best places to do business. So I, I think it's really important too that we, we perhaps don't paint with too broad a brush in this regard. The other thing that I want to point out-- there's been some discussion on mic and a little bit off to the edges of the conversation about, well, the trial attorneys' association, they don't really care about this for various reasons, so nobody else should as well. And let me be clear, the Legislature should not solely be a forum to resolve disagreements amongst various lobbyists. We welcome and appreciate all of the Nebraskans who come forward to share their perspective on issues before the committees at the public hearings, but whe-- whether or not we generally align with some of those groups or, or not, that does not mean that we take our marching orders from them, and we shouldn't. So whether or not another entity that does have expertise on these issues wants to dig in or not, that is not the sole signal that I am looking

for as to whether or not I think this is a good measure, because I do not think it is. My job is to not take marching orders from lobbyists. My job is to protect the consumers in Nebraska and the constituents in my district. So I also want to talk about perhaps why that may be, and let's not divorce it from the broader context at play here. Of course, every entity has to make a decision, as does every senator, about strategy. And perhaps when looking at these measures, this doesn't rise to the significance in terms of negative impact to everyday Nebraskans who might be harmed by the negligence of big corporations. When you look at this measure-- and I, I agree with Senator Hallstrom that it is a more balanced approach than we have seen in other states on this discrete issue. We cannot divorce-- divorce-- and should not divorce-- LB241 from what else is happening before this Legislature. Senator Hallstrom, Senator Sorrentino, Senator Bosn, and others have significant changes to Nebraskans' access to the courts when they're injured, in many instances through no fault of their own. There are major bills before the Legislature this year changing statute of limitations, putting caps on awards and damages, limiting discovery. And now here again is yet another change in civil practice that benefits those who act unreasonably when utilizing our private information that is online. So no doubt people have to make strategic decisions about where the largest threats are, and this might not rise to the top considering the plethora and onslaught of attacks on consumers' rights to the courts and effort after effort to undercut Nebraska working families. Attacks to minimum wage, attacks to sick leave, attacks to access and redress in the courts. The list goes on and on and on. And this is part and parcel-- part and parcel with those broader themes that are present and that have been thus far a hallmark defining issue of this Legislature, which I think is disappointing. Nebraskans wanted us to come together to figure out how working families would have a better chance to succeed. And thus far, the major pieces of legislation moving through this body do the exact opposite: they undercut working families to give benefit to large corporations. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. Senator Spivey, you're recognized.

SPIVEY: Thank you, Mr. President. I would like to take a moment again to recognize the participants from Eastern Nebraska Community Action Partnership's Senior Longevity Program. ENCAP's Senior Longevity Program aims to help low-income adults 60-plus in North Omaha live longer, remain joyful, and maintain their independence longer-term. Through evidence-based exercise initiatives, peer-to-peer support, gardening and nutrition, education, and many other enrichment

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

activities, these seniors are improving their physical, social, and emotional health together. They visit our State Capitol annually, and their voices do matter. And if y'all didn't know, the group that votes the most are our seniors, and so I appreciate them being here today and their advocacy and that I get to help represent their, their best interests and voices in our Nebraska Legislature. And with that, Mr. President, I yield the rest of my time to Senator Conrad.

FREDRICKSON: Senator Conrad, that's 4 minutes.

CONRAD: Thank you, Mr. President. Thank you, Senator Spivey. I wanted to continue on providing a little bit more information, and my friend Senator Dungan did a good job of laying some of this out, but I wanted to put a finer point on this. Another policy goal that proponents of this legislation have brought forward is that measures like these will help to deter fri-- frivolous lawsuits. And colleagues, measures like these are, are not needed to help deter frivolous lawsuits, because, in fact, we have a host of statutes on the books and an ethical code that we must adhere to as practicing attorneys to prevent frivolous lawsuits from being filed. So a frivolous lawsuit is a lawsuit that's filed without merit, merit or for an improper motive. And generally speaking, it's a claim that has no basis in fact or law. So a court rule and statute-- by court rule and statute, we already have mechanisms in place to address and resolve frivolous lawsuits quickly. So most commonly, a party can file a motion to dismiss called a 12(b)(6) motion pursuant to the uniform court rules, Section 6-112 [SIC], and a party can then also recover attorney's fees pursuant to that statute, Section 25-824. That provides protection from frivolous suits where the company can-- where a company can have the case dismissed and then can recover attorney's fees. So we already have mechanisms in place in our civil practice statutes and through our ethical code as attorneys that addresses and prevents and guards against frivolous lawsuits. So we don't need this measure to achieve or accomplish that policy goal. I wanted to also lift up again for my friend Senator Clements, who was still weighing his consideration of the amendment on the board. As I noted in my opening on the amendment, it was a measure that was brought forward in good faith, and here's what it does to help not only can-- organize our debate here in a constructive manner but to try and make a bill which I think is a bad bill better. So basically, there's already existing laws in Nebraska that says, when these kinds of cybersecurity breaches happen, here's what a corporation or an entity needs to do. They need to provide notice. They need to work through a, a host of different steps in order to protect consumer rights, essentially, and it, and it kind of lays out a framework for that. So what I'm doing is tying the existing law with existing obligations that corporations and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

other entities have to adhere to with Senator Hallstrom's measure, saying if you follow the existing law and meet these obligations as you are required to-- providing notice and otherwise-- in the event of a cybersecurity breach, then you can trigger this special protection that Senator Hallstrom seeks to bring forward in LB241. And finally-- I know my time is running short. I-- again, we're all sympathetic to a situation that my friend Senator Clements describes, where you do everything right, you invest a lot of time and energy and money into making sure that you have the right safeguards in place to protect private, sensitive information. That's a great thing. And if you take those measures, you're not going to ever meet the burden of proof under negligence or gross negligence.

FREDRICKSON: That's your time, Senator.

CONRAD: Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. Senator Moser would like to announce the following guests that are visiting the Legislature: 20 fourth grade students from Immanuel Lutheran School in Columbus, in the north balcony. Please rise and be recognized by your Nebraska Legislature. Returning to the queue. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I rise in opposition to LB241. I am not an attorney, so it's a little bit harder for me to wrap my brain around what all of this means, but I'm trying to follow along to what's being said this morning. But I'm going to just air my concerns as a non-legalese person in this body. I understand that the legal community, the trial attorneys' concerns or, or non-concerns with this is that most of these cases are filed in the federal court. And, and so this doesn't really concern them as far as these cases go. But my concern with LB241 specifically is any erosions of individual protections in our laws at the state level. And as we are seeing a shift of what our federal government looks like on a moment-to-moment basis right now and not really knowing, honestly, if we're going to have a federal government soon. So eroding our state policies, our state laws because we think that the federal government will be-- preempt them is, in my mind, a foolish direction to go. And when we're talking about fiscal notes and federal funds, this is being raised by, by you, colleagues, about taking those things into consideration. And I think the same thing should be taken into consideration when we're talking about eroding our state judicial policies. So I will be in opposition to this because I believe that we may be on a route to having things that might have been filed in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

federal courts being filed at the state level, because that's the only avenue available. And I want to ensure the integrity of our state courts and that they are here to serve the people. And I don't think that, you know, anybody tries to be malicious. Give grace. Think the best. But sometimes bad things happen and people need to be held accountable. And giving corporations blanket immunity from that on the cybersecurity issue doesn't make sense to me. And I think that it would behoove us to let our judicial system work the way that it's supposed to, where people have recourse when they have been harmed. And if the courts decide that that recourse is not the fault of the plaintiff, then, great. Then, the system worked for-- the way it was supposed to. But to remove the, the ability to even seek retribution I think is, is not something that I can support. And-- I mean, when it comes to cybersecurity, I feel like all of my information has been basically seized. I worked in the federal government. I had a federal retirement plan, so when the federal government turned over all of that information to a private entity this past month, I essentially feel that my information is no longer secure. But that's at the federal level. I haven't had that concern at the state level, though it doesn't really matter for me personally, since, you know, it's out there, but. So with that said, I will not be supporting LB241. I think we all should be considering how the federal government changes are going to impact what we do here at the state level. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Cavanaugh. Senator Conrad, you are recognized to speak.

CONRAD: Thank you, Mr. President. And thank you again, colleagues. I want to provide perhaps a, a concrete example of some recent state-level class actions that might help draw some connections for this bill. So as many of you know, even though I admire deeply his commitment to public service, I have a host of significant and serious policy and political disagreements with my friend Mike Hilgers, who serves as Nebraska's Attorney General. That being said, I think one of the most important cases that he's filed during his tenure, which definitely makes a lot of sense as he seeks to utilize his broad authority to advance consumer protection that we afford to the Attorney General's Office, was a class action case he filed in Nebraska state courts fairly recently to protect against a massive data breach that happened with a health care company. And Nebraskans' private information, including medical information, perhaps financial information, personal information was significantly breached and caused potential and actual harms for countless Nebraskans. And the health care companies in question did not act reasonably, did not follow the law. And Mike Hilgers brought forward a class action in Nebraska state

courts, not pushing it off to federal courts, to protect consumers' information and rights right here in Nebraska. So to say that no one ever utilizes class action cases in Nebraska, that-- that's not accurate at all, actually. They might more so go to federal courts for different reasons, but to simply say that Nebraskans don't utilize class actions in Nebraska state court is, is not accurate. And the other question that I would have for Senator Hallstrom and other supporters of this measure, if in fact this were to move forward, does that undermine that important litigation that our Attorney General is, in fact, bringing forward, where corporations have acted unreasonably and have harmed or risked harm to Nebraska consumers in a very serious way? So that would be another angle that I would want to gain some more clarity on as to whether or not this broad change to civil practice would implicate the ability of the Attorney General to bring class actions in state courts for significant consumer privacy violations and otherwise. The other piece that I want to lift up about a thread in the arguments that we've heard from proponents of this measure is that, oh, again, this doesn't really matter because most class actions go to federal court. Again, that may be the case-- strategically, for a variety of reasons-- but I do want to remind colleagues that just saying, oh, they'll take this up in federal court, or pushing cases to the federal court is definitely not a conservative principle. That is, that is definitely a kind of shocking statement from conservative-minded colleagues, to encourage litigation in federal rather than state courts. That, that definitely doesn't square with our long-standing under-- our long-standing understanding of the differences and availing ourselves to the jurisdiction of federal versus state courts. Typically, most people would agree-- and to advance a conservative perspective-- we shouldn't be ceding authority to federal courts but should provide a forum closer to home and more accessible and more able to quickly resolve disputes in our state court system, which were developed to do just that. So whether or not it is saying that people who are hurt by their-- kids who are hurt by their schools should just go to federal court or consumers who are hurt by corporations should just run to federal court, those really are very, very strange policy kind of arguments for most, most lawyers to make, and particularly for conservative lawyers to make. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Conrad. Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. One thing that's becoming more obvious as years go by for me is that bills are becoming more and more about the introducer and the-- their political party than about the substance

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

of the bill. This is a concept that is not conservative. This is a concept that is not about small government, that's not about working-class Nebraskans, it's not supportive of Nebraska families. And I can remember a time when I got started when conservatives would have stood up and spoken against something like this. Furthermore, a time when the committees wouldn't have been cracked and packed and something like this wouldn't have come out of committee. This is now the fourth or fifth bill that we've discussed on the floor that, in past years, would not have made it to the floor. So really kind of the arena and the, the field that we're playing on for this Legislature-- for the 109th Legislature-- it's, it's a really different landscape for me. And that's something that I expected and noticed, but I'm really seeing play out in bills like LB241. Another thing that is, is troubling me that I keep hearing people say is that the trial attorneys don't have a problem with this bill, that if, if a lobby that is-- that has strategic and political interests outside of the content of a bill doesn't come in opposition to something, then it doesn't make sense to oppose it. At the end of the day, all of these things about process and procedure-- the points can be made, but at the end of the day, Nebraska needs to protect its citizens-- excuse me-- needs to protect its citizens, not big tech. This isn't about protecting innovation. It's not about supporting corporations. I don't really understand the motivation for the bill. Because if we take no action, I don't know what's so wrong with the status quo where people who do experience breaches of their data and compromises of their security, that they're able to seek some kind of legal recourse for that, I don't understand why the status quo of that is so bad that we have to make it harder for Nebraskans to seek a judgment and seek recourse if their data's compromised. Also, is this really-- I, I do think it's going to become a bigger problem, but is it such a huge problem today that something like this is needed to protect corporations? Are we worried about corporations coming into Nebraska or not, or investing in Nebraska or not based on LB241? I don't think so. What this looks like to me is just a gift, a handout to big tech, allowing them to cut corners on security, fail Nebraskans, and face no consequences when users' personal information is exposed in a data breach. It's giving corporations free rein to be negligent without consequences, and it's Nebraskans who will face the price. And yes, there are still protections in the law under LB241, but how is the average Nebraskan going to take action, hire an attorney, go through the process? Because the process has been made more difficult for them by this bill. You know, the thing that really concerns me is this rise of, basically, technocracy, that we're witnessing; a system where corporations, unelected tech billionaires are wielding power over our public policy,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

over our private data, over our security and infrastructure, and companies like Uber and Google and Meta and Amazon and Elon Musk having his hands on all of it, controlling massive amounts of data, having massive amounts of wealth and influence, but they face fewer regulations, they have less accountability than any other company or interest. And this is not the future that we should accept. At the state level, Nebraska lawmakers, we can stand up for consumers, we can protect Nebraskans from corporate negligence, and we can ensure that tech companies are held to the same standards as everybody else. This is not a bill that's needed. And I'll support AM246 and oppose LB241. Thank you, Mr. President.

FREDRICKSON: Thank you, Senator Hunt. Senator Hallstrom, you're recognized.

HALLSTROM: Thank you, Mr. President. Just for the record, a couple of items that I want to address. Senator McKinney had indicated, and I think Senator Conrad did as well, their umbrage over this bill going to Banking Committee rather than Judiciary Committee. I would note for the record that the Data Financial Privacy Act of Senator Bostar, which was passed, was referred to Banking Committee last year, as was a biometric privacy bill, both last year and this year, that Senator Kauth brought. So we have had a more recent practice of those bills going to the Banking Committee as opposed to Judiciary. I think I'd just relate what I said earlier, when you're looking at the issues of the damages that are recoverable under these. I just had a longtime, well-respected staffer who indicated that they had gotten the \$10 class action lawsuit, and my suggestion was, I hope you didn't spend it all in one place. So we've got businesses that are being placed at risk, irrespective of what the class action lawsuit relates to, in, in exchange for consumers under the guise of consumer protection getting \$10, \$20, \$0.50, \$0.60, things of this nature. I don't think that's necessary. The other issue that I would correct for the record is the fact that the Attorney General-- and I've confirmed with him separately-- does not bring class action lawsuits. So it's a red herring to suggest that the Attorney General has brought a class action lawsuit and that this bill in any way, shape, or fashion would affect. I have a 29-page complaint in front of me, the Nebraska Attorney General versus Change Healthcare, and there's no reference of class action. And in fact, it is not a class action lawsuit. It's brought under the Uniform Deceptive Practices Act [SIC]. And I would also note there is another modicum of protection under Nebraska law, and that's under the Financial Data Protection, as well as the Consumer Notification of Data Security Breach Act, which is the underpinning for Senator Conrad's amendment. And both of those do not cau-- do not allow

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 11, 2025

for a private cause of action, but other-- instead have nominated or delegated the Attorney General to be responsible for bringing those particular causes of action. So there are protections for the public in that regard without putting businesses at risk. And-- with a great deal of trepidation-- Senator Raybould has set the bar high-- but this reminds me of a 1959 Coasters song which goes something like this: Charlie Brown, Charlie Brown. He's a clown, that Charlie Brown. Just you wait and see-- he's, he's going to get caught, just you wait and see. Why is everybody always is picking on me? Seriously, this is the second issue that we've spent some time on. I do appreciate the discussion and the debate of the body, but there are many reasons to move this bill. I suspect we'll get another chance to have some more discussions tomorrow, but the bill is worthy of your positive consideration and your green light when we get to that point. So thank you.

FREDRICKSON: Thank you, Senator Hallstrom. Sen-- Mr. Clerk for items.

CLERK: Thank you, Mr. President. Your Committee on Revenue, chaired by Senator von Gillern, reports LB592 to General File. Your Committee on Education, chaired by Senator Mor-- Murman, reports LB140, LB300, LB390, LB428 to General File, all having committee amendments. Your Committee on Revenue, chaired by Senator von Gillern, also reports LB501. Notice of committee hearing from the Education Committee and the Revenue Committee. Amendments to be printed from Senator Murman to LB300, LB390, LB428. Motion to withdraw from Senator Hardin: LB331, LR11CA, and LR10CA. Finally, Mr. President, name adds: Senator Hallstrom to LB6, LB10, LB25, LB139, LB195, LB198, LB250, LB313, LB424, and LB515; Senator Machaela Cavanaugh, name added to LB527; Senator Hallstrom, LB555, LB559, and LB630. Priority motion: Senator Raybould would move to adjourn the body until Wednesday, February 12 at 9:00 a.m.

FREDRICKSON: The question is, shall the Legislature adjourn? All those in favor say aye. All those opposed say nay. The Legislature is adjourned.