

FEBRUARY 23, 2001

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February 23, 2001 LR 37

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning; welcome to the George W. Norris Legislative Chamber; thirty-fourth day. Our prayer will be given this morning by Senator Lowen Kruse.

SENATOR KRUSE: (Prayer offered.)

SENATOR CUDABACK: Thank you very much, Senator Kruse, for doing that for us. I do call the thirty-fourth day of the Ninety-Seventh Legislature, First Session, to order. Senators, please record your presence. Record, please, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Corrections for the Journal, please?

CLERK: I have no corrections this morning, Mr. President.

SENATOR CUDABACK: Messages, reports or announcements?

CLERK: Just one item. Senator Thompson would offer LR 37; it's a resolution congratulating the Papillion-La Vista High School wrestling team. That will be laid over, Mr. President. That's the only item I have. (Legislative Journal pages 763-764.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Next agenda item.

CLERK: Mr. President, the Education Committee, chaired by Senator Raikes, offers a confirmation report, found on page 746 of the Journal.

SENATOR CUDABACK: Senator Raikes, as Chairman of Education Committee is Senator Raikes present? Senator Suttle, Senator Suttle. Senator Suttle, confirmation...

CLERK: Senator, we have a confirmation report, Senator, on page 746; it's the appointment of Richard Halbert and Larry Teahon to the Board of Trustees of the Nebraska State Colleges. It's on page 746, Senator.

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SENATOR CUDABACK: Senator Suttle, as Vice Chairman of Education Committee, you're recognized to open on your confirmation report.

SENATOR SUTTLE: Thank you, Mr. President. Members of the Legislature, Richard Halbert and Larry Teahon were confirmed by the Education Committee. I would...they are going to be going to the trustees of the Nebraska State Colleges. I would encourage your confirmation. Thank you, Mr. President.

SENATOR CUDABACK: You've heard the opening on the confirmation report. Open for discussion. Seeing no discussion, Senator Suttle. Senator Suttle waives closing. The question before the body is, shall the confirmation report offered by the Education Committee be adopted? All in favor vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 764.) 33 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The confirmation report is adopted. Mr. Clerk, next agenda item.

CLERK: Mr. President, Senator Chambers would move to withdraw LB 755.

SENATOR CUDABACK: Senator Chambers, you're recognized on your motion to withdraw LB 755.

SENATOR CHAMBERS: Mr. President and members of the Legislature, this is a bill that would have defined what is meant by "six months" when we're calculating good time. At the institution, they had not been taking 365 days, which is a year, dividing it by 2 and coming up with 185 and 1/2 days. They were estimating each month to be 30 days, which would come out to be less than 365 days for purposes of good time, although a year sentence was a full 365 days. I talked to Director Clarke; that matter is going to be straightened out administratively, which is the way it should be done. This bill now is no longer necessary, so I want to withdraw it, then the hearing that had been scheduled,

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down the line, can be cancelled. So that's what the motion is and I've given you the reason for the withdrawal, but if you have any questions, I will answer them.

SENATOR CUDABACK: Thank you, Senator Chambers. We're open for discussion on the motion to withdraw. Seeing none, Senator Chambers, you wish to close on your motion? Senator Chambers? You have...Senator Chambers waives closing. The question before the body is, shall LB 755 be withdrawn? All in favor vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: The motion was successful. Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 52, it's a bill by Senator Landis. (Read title.) The bill was introduced on January 4, referred to the Banking, Commerce, and Insurance Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0198, Legislative Journal page 517.)

SENATOR CUDABACK: Senator Landis, to open on LB 52.

SENATOR LANDIS: Thank you, Senator Cudaback. Members of the Legislature, if you were reading the Custer County Chief, in April 1996, you would have seen this advertisement. It says, "Guaranteed returns up to 14 percent per year. Has your investment portfolio grown stagnant? Are the yields on your stocks, bonds, CDs and mutual funds shrinking year after year? We are dedicated to finding consistently higher yields for the serious conservative investor. Find out how our premier benefits plan can bring you powerful returns for your money. This program protects you from adverse investment conditions. You receive a fixed return on your investment; external factors do not affect your return. This is as safe as an investment as you will find. To receive a complete information package, phone...", blank, blank, blank, blank, blank, blank. Well, the investment that you're asked to make, if you follow this up, is

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part of a viatical settlement in which you, as an investor, give money to a viatical company; the viatical company pays a broker to go out and find essentially a sick person. The sick person gets an insurance policy, the premiums of which are paid by the viatical company, and then you get named as the death beneficiary of the sick person. So your share here of guaranteed returns is that you know that the sick person is going to die and you're going to get their life insurance. That's the system. Well, although it grew out of a legitimate purpose a number of years ago, this business has come to take on very questionable activities. There are a number of ways in which individuals can be stung by the misuse of the viatical methodology. One of the things that can happen is the clean-sheeting of sick people, which is where doctors, for a fee, fraudulently fill out insurance forms, claim that individuals are well when they are not, thereby inducing insurance companies to write policies they would not otherwise do. And that clean-sheeting practice is made an illegal insurance fraud practice by LB 52. Another thing that can happen is that individuals who have insurance policies and essentially sell their death benefits to a viatical company can receive very low payments, because they're in desperate circumstances. In fact, there are records of cases in which people have sold their death benefits for as little as 20 percent of the value of those death benefits, because they're looking to get an immediate lump sum payment. There's a third way in which this system has produced unconscionable results. And that is that the investors, who believe themselves to be guaranteed results, and who are likely to believe the headline here saying, guaranteed results up to 14 percent per year, are likely to think of their being guaranteed 14 percent. They are not. They're being guaranteed 14 percent of the death benefit whenever it comes. So they think 14 percent per year, thinking that this investment will come to a head in one year in which the sick person will die and they'll get the insurance benefits; but in fact the person continues to live past that time, and although they...the investor does get 14 percent of the death benefits, it can shrink lower and lower as a percentage, the longer the individual who was insured lives. This provokes the strange phenomenon of either the viatical company or the investor calling up the sick person, the insured person and

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saying, are you still alive? This happens on a recurring basis, sometimes as much as a monthly basis, in which people are called up and asked (laugh) to verify that they are still breathing. LB 52 comes to us with the endorsement of the Insurance Department and the Banking Department. The Insurance Department will license viatical companies. That means that their practices will be part of our Unfair Trade Practices Act; that means that they will be reviewed for unethical practices as a part of their market conduct study; that means that their safety and soundness as an institution will be reviewed. Those are all very good ideas. In fact, one of the major viatical companies in Texas had \$177 million of investment, in which people had given them \$177 million, but in fact they'd only gone out and bought \$8 million of policy, and the other \$160 million were being spent on the lifestyle of the owners of the company. It was essentially a "Ponzi scheme". (Laugh) Ray is saying, how can I get a job? Well, that company would be, if it was operating in Nebraska, have to get a license and we would be able to examine them and see that their safety and soundness was such that they shouldn't be operating in this state. With respect to the investment aspect, where an investor gives money to the viatical company for going out and finding a person to have their life insured, this would be treated as a security so that there would have to be a prospectus, there would have to be a full disclosure, you'd have to get a very clear understanding of what you are buying. Ultimately, this does not stop the viatical business, because there are legitimate viatical settlements. What it does, however, is to inform the investor of what they can do; it gives the insured 15 days to rescind the deal, if they want to; it gives us an idea that only legitimate players are in the marketplace; and it creates remedy for people who feel wronged. It also gives us tools to attack the fraud aspect, when it does occur, and yet allow the viatical business to continue in this state should they wish. I'll close by telling you a place in which the Viatical Settlements Act or actually the viatical settlements phenomenon makes good sense and how it originally sprung up. It sprung up with people who had AIDs and an insurance policy. They were paying premiums on the insurance policy, but they were relatively young, so they hadn't built up a great deal of cash value. They knew that the death benefit was imminent, because this was in the days in

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which the AZT cocktail was not putting off death as well as it is today, so these are people who are in need of immediate money for health benefits. They couldn't use the cash value of their insurance policy because they were too young to have built up a rather good deal, and they clearly were going to have a death benefit that was going to be payable to somebody in the near future. So the viatical settlement business sprung up in which the AIDs patient signed the death benefit to the viatical company, the viatical company would give the AIDs patient a lump sum to help finance their healthcare needs, and then upon death the viatical company would receive the death benefit. Frankly, it was one of the few ways that we had to finance medical treatment for AIDs patients. And so in that sense it does make sense. However, since those days, unscrupulous viatical companies have gone out and found transients, they have faked insurance reports as to the medical conditions of individuals, they have started paying a broker to go out and find appropriate people that might be insurance policyholders, and those brokers are paid a finders fee for discovering an appropriately sick person for whom then the viatical company initiates this whole process. The committee advanced it 7-0. It was supported not only by the Department of Banking and Insurance, those two departments, but also by the Insurance Federation and the trial attorneys. I would ask for the advancement of LB 52. There are a few committee amendments, and when recognized I'll try to explain those as well.

SENATOR CUDABACK: Thank you, Senator Landis. As Chairman of the Banking, Commerce, and Insurance Committee, you're recognized to open on the committee amendments.

SENATOR LANDIS: Committee amendments amend Section 2 to clarify that in a fraudulent viatical settlement there must be an act of omission or commission that is knowingly done with the intent to defraud, and then to provide a definition of viatical settlement broker. It also includes a licensed life insurance producer that meets the requirements of a viatical settlement provider or a viatical settlement broker license. The committee amendments amend Section 3, providing a licensed life insurance producer shall be exempt from the requirements to obtain a viatical settlement provider license, if they are a life insurance

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provider that has no more than five settlements per year. So they're not in the regular business of doing this work. The committee amendments amend Section 7 and eliminate a requirement that a person required to be licensed under this act retain copies for five years of all advertising and licensing records. The department, to the extent that it needs to keep those records, will do so. And it eliminates a requirement that an escrow agent shall pay the settlement proceeds to the viator within three business days, receiving the acknowledged forms from the insurance company, because that time frame is too short. I would ask for the adoption of the committee amendments and then the advancement of the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. (Visitors and doctor of the day introduced.) On with discussing the committee amendments to LB 52. Senator Foley.

SENATOR FOLEY: Thank you, Senator Cudaback and members of the body. Senator Landis, just...maybe you can help me through this a little bit. You and I had a discussion a week or two ago regarding LB 55, which had some similar aspects to it, some consumer protection aspects that you were trying to and continue to try to bring forward into law. Under LB 52, if one seeks to enter into a viatical settlement agreement, your approach here, I think, is quite different from what you are trying to do in LB 55, in that there...one does not need to go to court, seek counsel, get the approval of a court. If the holder of the policy is presented with...with...with a financial opportunity, he or she may take advantage of that without seeking the court approval. Is that correct? Okay, yeah. So this is a much more light-handed consumer protection approach, I'd say.

SENATOR CUDABACK: Was that a question, Senator Foley?

SENATOR FOLEY: It was. (Laugh) It was a question.

SENATOR LANDIS: I will say that the viatical settlements industry wouldn't regard it as a lighter hand, but...

SENATOR FOLEY: I notice that they are...

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SENATOR LANDIS: ...that's in the eye of the beholder, and I'm sure that you might see it that way.

SENATOR FOLEY: What...I notice that they are opposed to the bill. What...how would you summarize their position?

SENATOR LANDIS: They did meet with the department. In fact, some of the committee amendments were an outgrowth of that discussion. Generally speaking, if there was to be one characterization of their chief concern, it was in making the investor who buys a share of somebody's life insurance policy, a security. That was the most critical sticking point. They thought that that would severely limit the prospect of getting investors to buy a portion of another human being's life insurance policy...

SENATOR FOLEY: Right.

SENATOR LANDIS: ...and, by the way, it doesn't bother me a bit that that's a rather difficult thing to do.

SENATOR FOLEY: Right. And isn't there a two-year...a two-year rule in here? Did I read that someplace? Can you explain that?

SENATOR LANDIS: Yes, the two-year rule says one of the ways of trying to combat the fraudulent creation of these is to distinguish between policies that are simply invented and then immediately turned around and viated and those which are legitimate because the individual went out and bought them on their own, paid for them for a couple of years, got into trouble, needs a lump sum payment and uses a legitimate viatical settlement company for that transition. So, the distinction here is that...that, although there are some exceptions, generally speaking you can't viate your life insurance policy until you've owned it for two years. There are exceptions to that, but that's the general rule.

SENATOR FOLEY: Yeah. Well, I thank you for bringing forward this bill. It seems to be a more balanced approach to consumer protection than some other bills that we've seen this session. Thank you.

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SENATOR CUDABACK: Thank you, Senator Foley. We are discussing the committee amendments to LB 52. Seeing no further discussion, Senator Landis, do you wish to close on the committee amendments?

SENATOR LANDIS: I...there is one committee amendment that I'd rather like...that I didn't want to...I didn't call to your attention before, and that is that the broker is limited to calling once every six months with insureds with a life expectancy of more than one year, and no more than once every three months with people who have a life expectancy of one year or less. So, if they are going to call to say, are you alive, they do it once every six months, unless you're in the last year, and then you can do it once every three months. A rather ghoulisish business, but at least there is that limitation. I'd ask for the adoption of the committee amendments and then the advancement of the bill.

SENATOR CUDABACK: Thank you, Senator Landis. The question before the body is, shall the committee amendments be adopted to LB 52? All in favor vote aye, opposed nay. We've voting on the committee amendments to LB 52. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Open for discussion on the advancement to E & R. Senator Beutler, on advancement.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, Senator Landis, could I inquire with regard to a couple of questions, if I might?

SENATOR CUDABACK: Senator Landis, would you yield, please?

SENATOR BEUTLER: Looking at Section 5, page 13, of the bill, it seemed to me that Section 5 is perhaps a key provision and I wanted to be sure that I understood it correctly. It says a

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person shall not use this particular type of settlement contract or provide to a "viator", is that the way you pronounce it, viator?

SENATOR LANDIS: I hear viator.

SENATOR BEUTLER: Viator?

SENATOR LANDIS: Um-hum.

SENATOR BEUTLER: ...a disclosure statement form in this state, unless filed with and approved by the director. And it says the director shall disapprove these particular kinds of contracts or a disclosure statement form if the contract or the provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator.

SENATOR LANDIS: We can't be wrong.

SENATOR BEUTLER: Okay. The question, though, is this, do I correctly read this to mean that executed contracts in this area...this is not just approval of forms, but approval of the executed contracts must come from the Department of Insurance?

SENATOR LANDIS: I don't think when you say this is going to be a viatical settlement contract that you're talking about an executed contract; I think you're talking about a contract form.

SENATOR BEUTLER: Okay. So all Section 5 is meant to do is to deal with the forms themselves.

SENATOR LANDIS: The paperwork, that's right. You're looking at...you're looking at the paperwork and saying, is the paperwork legitimate. And one of the reasons is these contracts have been done at such highly discounted amounts that the viator is getting less than one-fifth of the value that they're creating by this mechanism.

SENATOR BEUTLER: But does the...when you say they have to approve the form, I can imagine, for example, a form that comes in that has a little blank space where it says what percentage

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you're getting. So do they approve a form like that? I assume they have to approve a form like that. And, if they approve a form like that, what's to keep the figure being put into that blank space from being unreasonable, misleading, unfair, whatever?

SENATOR LANDIS: Well, understand that...yeah. I think you're going to get two aspects to this form of regulation. And you can't overburden this process with whether or not the ultimate outcome is fair. Here you're talking...you're looking at the contract and the disclosure form for their ability to disclose fairly what the situation is to be informative. How would you catch a contract that was, let's say, so one-sided as to be unconscionable? You wouldn't catch it in the contract disclosure form, you'd catch it in two ways. Number one, you give the 15-day right to rescind to the viator; and secondly, you'd catch them in the market conduct study when you came back through and examined this company's policies and said, show me your paperwork. And no matter...and however they were filled out or whatever, you'd have a chance to examine their practices as a whole, and you'd be able to determine whether or not the course of conduct was legitimate or illegitimate...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...at that point.

SENATOR BEUTLER: And is there a provision in the bill that says that the Department of Insurance, if they determine that executed contracts were unreasonable, contrary to the public interest or otherwise misleading or unfair, can jerk the license?

SENATOR LANDIS: It would become an unfair trade practice, if it became something other than a one-shot deal, because our unfair trade practices in this area involve a course of conduct. So you need a couple of examples of it. But when you get some examples of it, then it becomes an unfair trade practice and you can discipline in a number of different ways. You can lift a license. Understand that we're creating licensure here, and you can lift a license, you can suspend a license, you can revoke

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it, or you can also go under the administrative mechanisms of unfair trade practices in which you could discipline them by administrative fines and that kind of a situation.

SENATOR BEUTLER: Okay. So, picking up the comparison that Senator Foley was making, in the one case you kind of had...in that case you kind of had...

SENATOR CUDABACK: Time.

SENATOR BEUTLER: ...the court...

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Beutler, your light is next, you're recognized for five more minutes.

SENATOR BEUTLER: ...court looking over a specific contract and deciding whether it was in fact fair or not fair, and that was done, presumably, on the theory that you're dealing with a class of people who probably need that protection. Is that fair?

SENATOR LANDIS: I...I think that there are other justifications than that, but, yes, that would be a fair explanation.

SENATOR BEUTLER: Okay.

SENATOR LANDIS: One of the reasons for that situation is that recovery that we're talking about in LB 55 is quite likely a replacement for income. It's likely an individual whose ability to make money has been injured by some action they've had, and now they have the settlement that's been to replace that income with lumps...I'm sorry, with timed payments, and that when you lump sum it, you bring in a public interest in which we may well have to take care of them if that...that replacement for income doesn't stay viable over time.

SENATOR BEUTLER: Okay. So,...

SENATOR LANDIS: But essentially, I think you're right.

SENATOR BEUTLER: ...this is not having the director of Insurance replace the court in terms of looking over executed

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contracts, though.

SENATOR LANDIS: No.

SENATOR BEUTLER: Okay. One of the...look at page 34 of the bill. One of the things that I found that I liked about the bill but also startled me, I guess, and I found quite interesting is the whole section beginning on page 34, having to do with advertising. And the sections having to do with advertising go on for three or four pages. One section says, advertising shall be truthful and not misleading in fact or by implication. The form and content of the advertisement, dah, dah, dah, shall be sufficiently complete and clear as to avoid deception. It shall not have a capacity or tendency to mislead or deceive. Another portion of it tries to draw into the net Internet advertising viewed by persons located in this state, regardless of where they come from. Other portions of the advertising shall not omit material, information or use words, phrases, statements, dah, dah, dah, the words free, no cost, without cost, no additional cost, et cetera, shall not be used with respect to dah, dah, dah. Any testimonial, appraisal, you know, this is great stuff. (Laugh) And one's initial thought is, well now, this should be applied to the whole world; maybe even politicians could use it. And then, of course, the next thought is, well, no, wait a minute, where does free speech come in here, and, okay, who's making the decision with regard to this advertisement? Could you talk a little bit about how that works. Is it the Department of Insurance that's going to look over extensively this advertising that's used and decide whether or not it's appropriate, and if it's not appropriate...if they decide it's not appropriate, then does the whole array of deceptive trade practice, withdrawing of license, suspending of licenses, all that then come into play? And most importantly, who is the czar of advertising?

SENATOR LANDIS: The answers are there are essentially two czars of advertising. There are two aspects in which an unscrupulous viatical settlement company winds up scamming the public. One is the insurance mechanism...

SENATOR CUDABACK: One minute.

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SENATOR LANDIS: ...in which a relatively desperate individual undersells the cash value of their policy, or a totally disinterested party is persuaded to becoming a viator, and then clean-sheeted by a doctor in which an insurance policy is fraudulently issued and that interest is then...the premiums are paid by the viatical company and the life benefit goes to somebody else. So there's...there are insurance frauds, and then, secondarily, there are investor frauds in which investors are promised returns based on buying a portion of a life insurance policy. So, with respect to advertising, part of it is the disclosure of the individual who is getting the insurance policy or is...is...is encouraged to step forward and allow their life to be insured,...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...that's one thing.

SENATOR CUDABACK: Senator Beutler, your light is next; this will be your third time, Senator Beutler.

SENATOR BEUTLER: I would yield my time to Senator Landis, if he would in turn yield his time to me.

SENATOR CUDABACK: Senator Landis, five minutes.

SENATOR LANDIS: Well, I'll decide on whether I'll yield that time back to Senator Beutler or not.

SENATOR CUDABACK: Are you on...whose time are you on?

SENATOR LANDIS: We're on his.

SENATOR CUDABACK: Are you on Senator Beutler's time?

SENATOR LANDIS: Yes.

SENATOR CUDABACK: This is your last time, Senator Beutler.

SENATOR LANDIS: Okay, and I'll give him...I'll give him...I've

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put my light on and I'll give you some of my time. With respect to the investor, the Banking Department will be our czar in that this will become a security. And, as you know, a security has disclosure requirements, and to the extent that there is advertising rules in here that apply to that part of the process, it will be the Banking Department. To the extent that these references are made to the...getting somebody to step forward and allow their life to become insured because they're going to be promised some money out of nowhere, step forward, don't worry, we'll pay the premiums, don't worry, you won't pay for a doctor's appointment; don't worry, all you have to do is step forward and allow you...and to sign an insurance contract and you'll get a pot of money. That part of the exchange is by the Insurance Department. Remember that commercial free speech is regulatable in a way that political free speech or other free speech is not regulatable, and it is regulatable to insure the public's interest, and commercial speech is regulatable in this fashion, to my knowledge, and it's not uncommon that we have a number of ways of responding to commercial speech as is, to my knowledge, every advertising and disclosure requirement in the bill. And I return the time to Senator Beutler.

SENATOR CUDABACK: Two and a half minutes, Senator Beutler.

SENATOR BEUTLER: Senator...Senator Landis, don't misunderstand me, I think this is a really interesting and progressive attempt to get at something that's broad and abusive in many ways, and so my interest in it is because I'm interested in to what extent this might be applicable elsewhere. So, you have mentioned that there are two classes of people that are sought to be protected generally by the bill, but also in these advertising provisions. With respect to chronically ill people, for example, who might be tempted to bite upon one of these deals, I assume that because they are a vulnerable class of people, a more vulnerable class of people, that that's one reason that the advertising provisions are so extensive and clear and encouraged, essentially, by the fact that they're so extensive a look at and a review of advertising by a public official of one type or another. Do you think the provisions of this bill should be applied to all classes...should be applied wherever there is a class of person that's the same or equally vulnerable in our

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society?

SENATOR CUDABACK: Senator Landis.

SENATOR BEUTLER: I mean, why is this unique to this area? And, if it's not unique, where else should it be applied?

SENATOR LANDIS: Ah...

SENATOR BEUTLER: Should it be applied to all insurance...

SENATOR LANDIS: ...one of the difficulties is...

SENATOR BEUTLER: Should it be applied to all insurance contracts? We'll start there.

SENATOR LANDIS: (Laugh) Let me tell you why I think this is unique, this is a unique situation, and that is you and I are very familiar with the phenomenon of an industry that has a great number of legitimate users and a few bad apples. Of the 77 viator or viatical settlement companies,...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...33 of them are under investigation by state regulators. So that norm that says, look, 95 percent of the people that are doing this are just fine; we want a regulation scheme that recognizes that and doesn't overburden the 95 to get at the five isn't the situation here. We have some legitimate viatical settlement companies, and we have a relatively large number that are not legitimate. So unlike our norm when we do this business in which we assume that most of the players in the field are legitimate, this is a different can of worms. When almost half of the industry is under investigation, we draw (laugh) a higher standard here than we do otherwise, and so in answer to your question, I'm not sure I would say that the amount of work that we're doing here should be done in other industries...

SENATOR CUDABACK: Time.

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SENATOR LANDIS: ...because I think there's a unique situation there.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Landis, your light is next.

SENATOR LANDIS: I yield my time to Senator Beutler.

SENATOR CUDABACK: Senator Beutler, you have five minutes.

SENATOR BEUTLER: Senator Landis, I have more questions, but I think probably in terms of taking floor time this is as much as is appropriate. But I think I'm going to put aside this model for other purposes in the future. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis and Senator Beutler. Seeing no further lights on for discussion of the advancement of LB 52, Senator Landis, do you wish to close?

SENATOR LANDIS: I'm waiving closing.

SENATOR CUDABACK: Senator Landis waives his option to close. The question before the body is, shall LB 52 be advanced to E & R Initial? All in favor vote aye, opposed nay. We're voting for the advancement of LB 52 to E & R Initial. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to advance LB 52.

SENATOR CUDABACK: LB 52 does advance. Mr. Clerk, next agenda item.

CLERK: LB 298, Mr. President, by Senator Bruning. (Read title.) The bill was introduced on January 5, referred to the Banking, Commerce, and Insurance Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0215, Legislative Journal page 517.)

SENATOR CUDABACK: Senator Bruning, you're recognized to open on the advancement of LB 298.

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SENATOR BRUNING: Mr. President, members of the Legislature, LB 298 is designed to codify fees established by the Nebraska State Records Board regarding access to Secretary of State's records. These fees were established by the State Records Board pursuant to the statutory authority that we gave them. We authorized...or the statute authorizes the board to set fees, but these fees have to be approved by the Legislature within 18 months, or they lapse. And the fees referenced in this bill were approved by the board last December, December of 2000, so we need to approve them within 18 months. What the bill does is it establishes a fee of 50 cents per page for on-line images. Current statute provides for a fee of up to \$1 per page. The State Records Board didn't think that was necessary, they chose 50 cents. And although the broad statutory language here applies to all Secretary of State's records, the only records that the office is currently storing and the only records they plan to put on-line are corporate and UCC records at this point. The bill eliminates a 75 cent per search fee for corporate status checks. This information is now available at no charge over the phone and it's consistent with the Secretary of State's goal to provide information electronically for the same price or less than it's available from other sources. So they want to repeal that fee. And the final thing this bill does is it puts a cap on batch fees, batch fees being fees for large requests. With that, I would yield my time back to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Bruning. You've heard the opening on the advancement of LB 298. Senator Landis, as Chairman of Banking and Commerce Committee, to open on the committee amendments.

SENATOR LANDIS: Senator Cudaback, members of the Legislature, we used a clarifying amendment to say that the rules involved in LB 298 applied to business entity filings. In other words, the 50 cents and the \$2,000 batch maximums would apply in essence to what the Secretary of State intends to do and put on-line and available in this way, which are the corporate filings and the like. So it essentially says, instead of all records, it just says...inserts business entity filings made with the Corporate Division and filings made with the Uniform Commercial Code

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Division. And in that way we will make this change to conform with the practices that the Secretary of State will actually be doing. And I would ask for the adoption of the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. We're open for discussion on the committee amendments to LB 298. Seeing no lights on, Senator Landis, did you wish to close? He waives closing. The question before the body is, shall the committee amendments to LB 298 be adopted? All in favor vote aye, opposed nay. Voting on the committee amendments to LB 298. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. Open for discussion on the advancement of LB 298 to E & R Initial. Open for discussion. Seeing no discussion lights on, Senator Bruning. Senator Bruning waives closing. The question before the body is, shall LB 298 be advanced to E & R Initial? All in favor vote aye, opposed nay. Voting on the advancement of LB 298. Record, please, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB 298.

SENATOR CUDABACK: LB 298 does advance. Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 15, by Senator Chambers. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File.

SENATOR CUDABACK: Senator Chambers, you're recognized to open on the advancement of LB 15.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I will have an amendment to offer to this bill to further tighten it up, to make sure that it's clear exactly what the bill is designed to do, and while doing that not disrespecting the right

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to privacy which an inmate will have with reference to his or her records. But this bill is before you thanks to an opinion written by the Attorney General, which I think misreads and misapplies the law. There is a section of statute, at 83-178, which says that information in an inmate's file shall not be available to public inspection, except by court order for good cause shown. That statute proceeds to list the types of items which are in that inmate's file. Medical records is not one of the items included. But, by the department putting the medical records in that file, it gave them a way to skirt the law's intent by saying, since it's in the file, the inmate himself or herself has no access to his or her own medical records. There is no state interest served by denying inmates access to their records. It is totally preposterous to require an inmate to hire a lawyer to get a court order to see his or her medical records when the policy of this state has been clearly stated that a person has a right to access to his or her own medical records. The Attorney General said that does not apply to inmates. Director Clarke has no objection to inmates seeing their records. But since the Attorney General wrote this opinion, it is binding. That necessitated me bringing a bill to put into statute something with a common sense reading of the existing law would make unnecessary. But rather than continuing to have these ongoing disputes, having inmates denied access to their records, being told that you must get a court order, and it's doubtful whether a court is going to appoint an inmate a lawyer to do this, I'm offering this bill. There was an article in the Omaha World-Herald, dated November 22 of the year 2000, last year. And, on page 14, this paragraph was written, inmates do not have the option of seeing a doctor outside the department, Corrections' Attorney, George Green said. You're not in summer camp, Green said; you don't shop for docs; you get the docs we assign. If inmates need to see their records, they can hire an attorney and get a court order for their release, Green said. This cavalier, insensitive attitude by the lawyer for the Department of Corrections is what makes this type of bill necessary and there may be others in the future. We are going to have to send a message to the department, to the lawyer that when we put something in statute, we mean it to do what we say that it should do. We mean for employees and others who administer the law to apply and administer the law according to

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the clear terms of the law. So what this bill in its present form will say is that an inmate has a right to access to his or her own medical records. If anybody sees a reason why that ought not be the case, if anybody is of a mind to ask me questions about this bill or any aspect of it, I hope such questions will be put at this point so we can build a complete record. I don't know what else I need to say to explain the bill or let you know why I'm bringing it. But, if you do have questions, feel free to put them to me at this time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator. You heard the opening on the advancement of LB 15. Senator Chambers, there are no...Mr. Clerk, something on the desk?

CLERK: Senator Chambers would move to amend with AM0650, Mr. President. (Legislative Journal page 765.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment 0650.

SENATOR CHAMBERS: Thank you, Mr. President. This is some additional language that will be added to the bill, and I'm going to read it so it will be in the record. On page 3, line 1, and you'll find this on your gadget, but I'm reading this for the sake of the printed record that is kept on our debates. Quote: The department retains the authority to withhold mental health and psychological records of the inmate when appropriate. That provision goes along with the Community Standard of Care in these situations. When we're talking about psychological evaluations and other things that are in that area, the inmate cannot simply come forth and say, I want access to those records, too. There will be a handling of those records on the basis of an actual need being shown and under circumstances where no harm will result as a result of making those records available. The second addition that will be made to the bill will be found in the following language: The Public Counsel's access to an inmate's medical or mental health records shall be subject to the inmate's consent. This is put into the bill because an additional part of LB 15, which I hadn't touched on, grants access to these records by the Public Counsel, which

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under existing law dealing with the powers of the Public Counsel should be available anyway. But, once again, this is one of those bills which says we, as the Legislature, declared something in law and this time we mean it. So what we're doing is underlining, and that may cause those who are looking at this law to properly administer it. The third addition: The Office of Public Counsel shall not disclose an inmate's medical or mental health records to anyone else, including any person committed to the department, except as authorized by law. The Public Counsel right now would not and does not reveal anything from an inmate's medical or psychological records in a way that would be contrary to the law as it stands now. But I'm willing to give this reassurance to the department. One thing I do want to make clear with reference to the language requiring an inmate's consent, when an inmate files a complaint with the Ombudsman's Office, the formal name is the Office of Public Counsel, but that's the Ombudsman. The fact that the inmate files a written complaint with the Ombudsman's Office and the complaint involves medical care or lack thereof, that letter should be taken as consent of the inmate to have the public counsel have access to his or her records. And I'm putting this into the record today because if the department, because I'm putting this language relative to the inmate's consent into the law, would use that language that I'm putting into the law as a basis to impede investigations by the Ombudsman's Office by saying the request that the inmate made is not sufficient. I want to serve notice that I will be on the department with both feet. And for those of you all who are old enough to know who Al Capp was and ever read his comic strip about "Li'l Abner", my feet will make Little Abner's feet look like those of a ballerina. So they don't want one of my feet on them, let alone both. And the reason it's necessary to move in this manner and put these things clearly on the record is because they are employees with the Department of Corrections who do everything to make an inmate's life as unlivable as possible. They pick at these people, they prod and provoke them so that the inmate might make a gesture or make a comment which can be used as a basis to give a negative write-up to that inmate which will harm that individual when time comes to be considered for parole, work release or other programs that are to be made available. So, with what I have said to you this morning, I hope you

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understand what the bill does, what the purpose of it is. Any questions you have on any aspect of it I will answer. But in order that the Department of Correctional Services' employees will understand what I'm talking about, I'm going to make a positive assertion which in being read even a fool cannot err. When an inmate writes a complaint or a request for assistance to the Ombudsman relative to a medical issue facing that inmate, that written request to the Ombudsman for assistance constitutes consent by the inmate to have the Ombudsman obtain access to the inmate's records, period. The next sentence. What sense does it make, brothers and sisters, to suggest that an inmate is going to seek help from the Ombudsman's Office on a medical problem but is going to deny the Ombudsman access to his or her medical records? It's not the inmates denying access; it is the department. It is vindictive, unconscionable, unethical action by departmental employees. I hope you will adopt this amendment, then I hope you will support advancing the bill.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on AM0650 to LB 15. Open for discussion. Seeing no lights, Senator Chambers, did you wish to...Senator Chambers waives closing. The question before the body is, shall AM0650 be adopted to LB 15? All in favor vote aye, opposed nay. We're voting on AM0650 to LB 15. Have you all voted? Record, please, Mr. Clerk.

CLERK: 32 ayes, 0 nays. Mr. President, on the adoption of Senator Chambers' amendment.

SENATOR CUDABACK: The amendment is adopted. We're now open for discussion on advancement of LB 15. Seeing no lights, Senator Chambers.

SENATOR CHAMBERS: Mr. President, in my closing, I think I just have to state a philosophy of mine with reference to state employees. Sometimes people who have charge over others become very puffed up. They think they have more authority under the parameters of their job than they really have. They become arrogant; they become spiteful. And those who hire these people have to be held accountable for what these people do. Let's say that with the Legislature we have individuals who make contact

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with the public and they are rude, they are disrespectful. Then they ought to be fired. And if they ought to be fired for being disrespectful to the public, they should be fired for being disrespectful to anybody. Nobody should have to tiptoe around these employees. They don't run anything, they don't own anything, and they've been allowed sometimes to think they have more power and authority than they have. And if their bosses don't know how to get them in line, the boss is responsible. If the boss cannot properly run the ship, you need a new captain. And I believe in helping the little people, so I am the one who will deal with the ship captain. The captain may be able to stomp his feet and make an ugly face and intimidate others, but the captain does not imitate (sic) me, because I have something to say about whether the captain keeps his job. So, like when I was in the army, this sergeant used to tell us, if you make my job easy for me, I'll make your job easy for you, but you can't make my job harder for me than I can make yours for you, you can't do that. And there is a way to make the temperature so high that people will leave that environment running. And I know how, brothers and sisters, to turn up the heat. So I'm serving notice, not only to the Department of Corrections and the boss out there, but I'm serving notice to everybody who hires and I'm serving notice to those who are hired that they need to straighten up and fly right, and some need to be shipped out. And I'm going to start checking on what steps are taken when certain people are hired, to see where they come from, how they get those jobs, and why other groups are not represented in those realms of employment. And maybe people can feel that they've got it locked up so tight that they can do anything they want to because they're untouchable. I do what the phone company said it would do and can let you do, but the phone company didn't do it and most people didn't do it. I will reach out and touch, and they don't want that touch from me. The touch they would rather have is that, symbolically speaking, of a nice, gentle, tender caress based on a person having done a job well. But a caress is done with an open palm, and it's just the force with which you apply it that distinguishes a caress from a slap. I don't want to slap anybody but if I'm made to slap, I know how to do it. I hope that you will vote to advance this bill so it won't be necessary for me to slap anybody at the Department of Corrections. Thank you.

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SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on the advancement of LB 15. The question before the body is, shall LB 15 be advanced to E & R Initial? All in favor vote aye, opposed nay. Voting on the advancement of LB 15. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB 15.

SENATOR CUDABACK: LB 15 does advance. Mr. Clerk, next agenda item.

CLERK: LB 23, Mr. President, by Senator Suttle. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File. I have no amendments at this time, Mr. President.

SENATOR CUDABACK: Senator Suttle, you're recognized to open on the advancement of LB 23.

SENATOR SUTTLE: Thank you, Mr. President. Members of the Legislature, LB 23 increases the number of juvenile judges in Douglas County from four to five. The provisions of this bill were before the Judiciary Committee in 1999, and we did...it was advanced. We did pass it and the Governor vetoed it. The Judicial Resources Commission has approved this request twice, once in 1999, and again in 2000. The reasons are...were sent to me in a letter dated April 10, 2000, that if you will look on the sheets that I passed out to you earlier, on the back sheet it shows the court orders and hearings generated per year in Douglas County for the judges that are there. And in 1998, there were 17,748, and in 1999, the latest numbers we have, was 19,118. And if they keep going up like that, our judges are not getting any rest at all. But one of the things that all four judges wrote to me in April of last year was the increased docket requires that judges schedule cases approximately every 15 minutes. This leaves no meaningful opportunity to address the needs of children and families, and does not meet national standards of judicial justice, which recommend at least 30 to

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60 minutes for all dispositions and review hearings. In addition to an ever-increasing caseload, the behavioral and emotional difficulties exhibited by today's juvenile court population are growing quite serious, making it more difficult and time consuming to meet the needs of children, families and the community. Also due to recent changes in federal and state law, more urgency is given for the need to terminate parental rights. In many cases motions to terminate parental rights are very time consuming and require a more thoughtful and prudent approach. We on the state level do not sever parental...their parental rights in a lighthearted manner. I would appreciate it if you would advance this to Select File. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. You've heard the opening on the advancement of LB 23. Open for discussion. Senator Brashear, on discussion.

SENATOR BRASHEAR: Mr. Chairman, members of the body, I simply don't want to belabor this, I simply want to rise in support of advancement of the bill and urge its advancement by the body. There is a critical need; you saw it last year, you were responsive; I hope we can be again. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Open for discussion on the advancement of LB 23. Senator Suttle, there are no further...do you wish to close? Senator Suttle waives her option to close. The question before the body is, shall LB 23 be advanced to E & R Initial? All in favor vote aye, opposed nay. We're voting on the advancement of LB 23. Have you all voted who care to? Record, please, Mr. Clerk. Excuse me.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 23.

SENATOR CUDABACK: LB 23 does advance. Mr. Clerk, items for the record?

CLERK: Mr. President, thank you. Senator Byars would like to withdraw LB 187. That will be laid over. I have a confirmation

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hearing report from Natural Resources. Senator Schrock would like to print an amendment to LB 243. And Natural Resources Committee reports LB 427 to General File. Urban Affairs reports LB 808 to General File with amendments; LB 809 to General File with amendments; those reports signed by the respective Chairs. That's all that I have, Mr. President. (Legislative Journal pages 766-767.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 86, a bill by Senator Brashear. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File. I have no amendments to the bill, Mr. President.

SENATOR CUDABACK: Senator Brashear, you're recognized to open on the advancement of LB 86.

SENATOR BRASHEAR: Thank you, Mr. Chairman. Members of the body, LB 86 addresses the crime of criminal attempt and inserts unintentionally omitted language pertaining to the penalties within the statute. Neb. Rev. Stat. 28-201 defines the crime of criminal attempt. The penalty section of the statute provides the penalty for all grades of offenses, except where the attempted crime is a Class I(c) or Class I(d) felony. LB 86 corrects that omission. Class I(c) and Class I(d) felonies relate to offenses involving controlled substances. I would urge this technical correction and urge the advancement of the bill. Thank you.

SENATOR CUDABACK: You've heard the opening on the advancement of LB 86. We're open for discussion. Senator Brashear, I see no lights on, did you wish to close on advancement? Senator Brashear waives his option to close. The question before the body is, shall LB 86 be advanced to E & R Initial? All in favor vote aye, opposed nay. We're voting on the advancement of LB 86. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of

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LB 86.

SENATOR CUDABACK: LB 86 does advance. Mr. Clerk, next item.

CLERK: LB 451, Mr. President, by Senator Thompson. (Read title.) The bill was introduced on January 10, referred to the Judiciary Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President.

SENATOR CUDABACK: Senator Thompson, you're recognized to open on LB 451.

SENATOR THOMPSON: Thank you, Mr. President. Members of the body, LB 451 is a bill that comes to you because of a bill we passed last year. As you may recall, the priority bill that I designated last year was a combination of several bills brought to the Legislature in an attempt to address issues of juvenile detention, diversion and intake processes. Two years ago, the Nebraska Association of County Officials hired Chinn and Associates, a national consulting firm that does work on juvenile justice planning, to look at the detention system in Nebraska and make recommendations. On the yellow sheet in front of you are some excerpts from that plan and they include findings and a recommendation. And her findings were that many youth in Nebraska are placed in detention for reasons not included in our Juvenile Code. These include probation violation, status offenses, pending evaluations and other reasons that are not defined by statute. And also that placement in secure facilities should be for youth only that pose a risk to the community. Risk factors should be determined locally by juvenile justice officials and include the offenses and other factors to determine those placements. And her recommendation was the report states specifically that a risk assessment instrument for secure detention be developed. As a result of that, the county officials and several members of the Legislature worked to bring forth a bill to address that issue. Last year we passed a bill that requires a juvenile screening intake instrument be used by October 1 of 2001. And to facilitate that, a juvenile detention task force was created. Senator Aguilar, Senator Jensen and I are representatives of the Legislature on that task force, which includes people from the

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juvenile justice system throughout Nebraska. They are appointed by the Governor, by congressional district. We have juvenile court judges, county court judges, probation officers, members of the public who have an interest in this, law enforcement, basically everyone who needs to be at the table, probably a big table in this case, with 28 members to look at these issues. We started meeting last summer. We have technical assistance from Dr. Denise Herz, from the University of Nebraska at Omaha, and a doctoral candidate who staffed this project. Attached to the yellow sheet are the recommendations of the task force to date. And I'm just going to highlight a couple of things on pages 5, 6, and 7, because they also validate...the findings of the committee also validate the findings of the national consultant. On page 5, three of the findings are that the inconsistent use of pre...that three issues regarding preadjudicated detention decisions are present across the state. One is the inconsistent use of preadjudication detention for juveniles. It should be our goal, as policymakers, to be as consistent and fair to youth, whether they...regardless of where they live in the state--the appropriateness of detaining youth without applying a consistent process and criteria; the impact of inappropriate and unnecessary use of preadjudicated detention on high detention rates and overcrowding; overrepresentation of minorities in the system; consequences on the juvenile, his, her family and the community; and the high cost of detention imposed upon counties. And, as a result, the committee spent a great deal of time reviewing the current detention screening instrument that is used by probation. Probation does perform a juvenile intake process in some areas of the state. In my county, for example, there is juvenile intake; that's been in place for about five years. Also, if you are in Omaha, there is juvenile intake, but it is not as extensive as in my area, because they aren't able to, because of staffing issues, have face-to-face interviews. There's juvenile intake in the North Platte area, but some of the other...most of the other areas of the state do not have juvenile intake. Currently, the system allocates six juvenile intake officers that are handling some part of the state. The detention task force looked at a way to recommend to you, and working with state probation, how many more officers need to be in place in order to be able to execute what we did last year in saying we will provide juvenile intake screening as of October 1

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of 2001. Our recommendation of the task force and working with state probation is to add seven intake officers. If you look on page 6, you can see how some of the research that came into this...there is a study that has been done in Lancaster County, and they just added some screening, additional screening through county funds, actually, in an agreement with the state to...that supports this and also I'm talking kind of fast, but there are a couple of letters, both from my county that has been doing this for about five years, saying better decisions have been made, and as a result fewer kids are being put in intake or put in detention. That doesn't mean they aren't getting attention; they are probably getting some other types of community services, but don't have to be put in a secure detention situation. So we used...working with the university, we used a formula that's based on a workload formula, on page 8, to determine these numbers. And essentially, we divided the total numbers available for one officer per year by the total number...into the total number of arrests, the estimated percentage needing intake decision, and a formula of about two hours for each of those decisions. This will be spread out through the probation system. Other probation officers will have training in juvenile intake because this happens around the clock, 24 hours a day. But we will have these additional seven intake officers with a trailing A bill and eventually, by October...they will be hired this summer and trained and we will have statewide juvenile intake by October 1 of 2001. This is...the instrument assesses objectively, as objectively as can happen, through one trained probation...person working through probation to look at risks of danger to themselves or others and risk of flight and other key issues that are the purpose of detention in the state. It will direct that to those employees to make that decision. And it's being done that way, as I said, in part of the state. In other parts of the state it may be a law enforcement officer, it may be a judge. But this will provide a consistent way to address this and hopefully we'll be able to reduce disparities, we'll be able to make better decisions for the youth and their families, and also reduce the costs to the counties for kids who are being inappropriately placed in detention. And, with that, I would ask your advancement of the bill.

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SENATOR CUDABACK: Thank you, Senator Thompson. (Visitors introduced.) On the discussion of the advancement of LB 451, Senator Beutler.

SENATOR BEUTLER: Senator Thompson, just a couple quick questions, if I may.

SENATOR CUDABACK: Senator Thompson, will you yield?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: On page 12 of the bill, subsection 2 on line 7, is the basic proposition that a probation officer's decision to release a juvenile from custody or to secure or nonsecure detention has to be based on the test. It says, shall be based upon the results of the standardized test. Does that mean shall be based solely upon the test, or can other factors be considered?

SENATOR THOMPSON: It would be based, at this decision point, it would be based on that screening instrument.

SENATOR BEUTLER: Okay, so it would be...it would be based solely upon the screening instrument.

SENATOR THOMPSON: Well, can I just add a little to that?

SENATOR BEUTLER: Sure.

SENATOR THOMPSON: The screening instrument process does involve interviewing a number of people, including family or someone who may be available to...to take...take the child back into their homes. It has to do with making some preliminary assessments about any risks that may be there. So it is a piece of paper, but going onto the piece of paper are processes that come to make that decision. So it isn't...it's...it's a little broader than a piece of paper, but that piece of paper provides the way that...that we're edging toward to get more consistency.

SENATOR BEUTLER: Okay. I...I appreciate that factor. I just wanted to, but still as far as a record is concerned that people

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might want to look at, to determine whether the process had been fairly followed or not, it's your intent that it be solely based upon this...

SENATOR THOMPSON: Process.

SENATOR BEUTLER: ...process, which is in fact a broad process, as you understand it, as you know it to be, I should say. But it's to be based solely on that screening instrument?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay. The second question is, just a short-term question. This is constructed so that the...

SENATOR THOMPSON: Well, excuse me, there can be an override of that instrument, but there's a process for that, too.

SENATOR BEUTLER: Okay. Could you explain that...that process a little bit?

SENATOR THOMPSON: Yes, and I would also mention that Frank Jenson, from State Probation is here, and so I'm not...I'm going to say what I think it is, and we will double check and make sure it's that way.

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: But, do we have a copy of that? We're going to go get a copy of the instrument. But it...it does provide a way that an override can happen, but it's meant to be consistent...to provide consistency.

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: And I'm going to get you a copy of that. I don't know if we can advance today, if you're comfortable, and kind of work through...

SENATOR CUDABACK: Senator Thompson, we can't hear you, Senator Thompson, please speak into the mike.

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SENATOR BEUTLER: No, I have...I have no major problems, I'm just basically...

SENATOR THOMPSON: Okay.

SENATOR BEUTLER: ...trying to establish a record as to how this is going to be interpreted, or if there can be further clarifying language, fine. Certainly, we can talk off the floor on these things. But the second question I wanted to...to ask you, you've tied this down now so that it has to be probation officers who are trained who give this test or this screening instrument.

SENATOR THOMPSON: Um-hum.

SENATOR BEUTLER: Is...is there...I don't know to what extent that may take training. But, if this is going into effect in 90 days, is there time for people to be appropriately training in time to move to the next step without being caught in a situation where the law says you have to have trained people, but they're not yet trained sufficiently to do it in sufficient numbers?

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: There are currently six officers that have...are considered juvenile intake officers. This will make it 13. When we passed the bill last year we picked the October date so that the department would have time to hire, after this budget cycle, when the new people would come on and provide the training. And the training will be not only...it will be systemwide. So part of the...part of the areas of the state already do this, so it isn't like they're going to have to gear up with a new training system. It's already there and we are just adding additional personnel, and they felt the three months would be adequate to hire. They may even transfer people internally. I'm not exactly sure, but we worked with State Probation last year, they wrote that section of the bill, and I feel comfortable and they helped in the writing of this bill, was also reviewed by the task force.

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SENATOR CUDABACK: Time.

SENATOR BEUTLER: Okay, thank you, Senator. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. We're discussing the advancement of LB 451. Those wishing to speak are Senators Hilgert, Dwite Pedersen, Senator Thompson and Senator Wehrbein. Senator Hilgert.

SENATOR HILGERT: Thank you, Mr. President, members. On page 14 there is intent language of the bill, and it says, it is the intent of the Legislature to insure that a consistent and objective method of juvenile intake occur throughout the state for juveniles held in temporary custody by law enforcement officers. It goes on to further...further to say, to avoid either inappropriate or unnecessary detention of juveniles which may result in inordinately high detention rates, overcrowding of local detention facilities, excessive detention costs for counties, and adverse consequences for the juvenile, the juvenile's family or the community. My question to Senator Thompson, if she'd yield, is this, the intent language does...it seems to presuppose an existence of inappropriate detention by the government of juveniles. And I was wondering, to what extent this occurs? And do you have any statistics in Douglas County of the inappropriate detention of juveniles?

SENATOR CUDABACK: Senator Thompson, will you yield, please?

SENATOR THOMPSON: My answer would be, yes. And I do...I don't have it on the floor, but we did get some statistics from...from Douglas County, and I'd be happy to provide that to you.

SENATOR HILGERT: Thank you.

SENATOR THOMPSON: But we know that our system...we are...we lock up more kids as a state than the rest of the country. We know that we our minority overrepresentation is high, and we know that females being incarcerated are high.

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SENATOR HILGERT: Okay.

SENATOR THOMPSON: And I'd be happy to bring all of that into the body.

SENATOR HILGERT: So, so, this methodology of which we will screen these individuals to determine where detention is necessary is simply based on statistical analysis? Once we have so many females, minorities, there will be a cutoff and...

SENATOR THOMPSON: No.

SENATOR HILGERT: ...because you just...you responded...

SENATOR THOMPSON: No.

SENATOR HILGERT: ...I've asked for if you have...can you give me an example of some specific instances in Douglas County where juveniles are inappropriately confined?

SENATOR THOMPSON: I'm going to have to get the information that I have, because I don't have anecdotal to that. And I just want to clarify what I'm saying. This will provide a risk assessment instrument that...that is nationally used; it's based...it's being used in other parts of the country successfully; it's been validated in other parts of the country successfully to show that it is an instrument that is based on objectivity.

SENATOR HILGERT: Well, I...that's...that's not...

SENATOR THOMPSON: So you may...

SENATOR HILGERT: ...really a response, and this is my time. But what I'm trying to get to is the intent language on page 14 presupposes that there is inappropriate and unnecessary placement of juveniles in detention. For me, I would like to know when is that...you know, in Douglas County, which is a large county in Nebraska, how often that occurs? Because if we're going to put this intent language in, we're basically presupposing and saying that this is happening in the state of Nebraska. And...and certainly it's revealing when you look at

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national statistics. But to put specific intent language, I would be more comfortable if we had something more concrete than national statistics. Thank you.

SENATOR HILGERT: Thank you, Senator Hilgert. Senator Dwite Pedersen, on the advancement of LB 451. Senator Pedersen, you're recognized.

SENATOR Dw. PEDERSEN: Thank you, Mr. President. Members of the Legislature, I just want to touch on one little part of this LB 451. And it's a very important bill. One of the things we talk about often in here, and we hear from our constituency is the cost and the cost of their property taxes. Now I know there's a fiscal note with this, and it's a hefty little fiscal note as far as when you come from numbers as I see them, it's not millions of dollars, but it's going to cost us some money. But I want you to know that we are placing people, on a daily basis, into our juvenile facilities that do not belong there. And that is very, very costly services. This bill will go a long ways to help that. We have to have a system that says whose...who really needs it and who doesn't. As soon as we build a detention center and we open up beds, we turn into a dropping off place instead of doing the work of getting them back home and getting them into the places where they really belong. Detention is not needed for all the people that are in there, believe me, I've worked in this system for years. And once they get into the system, we don't get them back out. So we have to do this up front. It's necessary, people, please support this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Pedersen. (Visitors introduced.) Senator Thompson, followed by Senator Wehrbein, Chambers and Hilgert. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. I would just, again, just to respond to Senator Hilgert's comment, the Nebraska Association of County Officials hired Chinn and Associates. I could be wrong, but I believe it's close to \$100,000 that they paid for this...this work, and her conclusions were, as you see on the top of the yellow sheet, so that's our first information. Second, we formed a 28-member

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Juvenile Detention, Probation Services Implementation Team. On page 5, their conclusions are also what reflect the intent language in the bill. And I have worked in this area, whether you want to use me as someone who knows anything about it, but I've sat in about... a lot of meetings and I feel very confident and probably saddened to say that I feel strongly that a lot of kids in this state are locked up that shouldn't be, and that if we had a better array of services, which another bill is going to help create, we wouldn't have to put kids in secure detention. And some kids, when they enter the juvenile justice system, that's not a good thing. It's better to try to help resolve those problems and not expose them to new friends that may lead them in other directions. They need to... we need to have this. I'm kind of surprised that this is being raised as an issue. I think it's, to me, a foregone conclusion. We know we have a problem not only at the detention level, also in our state facilities, and we need to solve that problem. We're passing out to you a copy of the juvenile intake screening instrument so that you can see what it is and I support, again, the conclusions of the group that worked last year to get this process rolling and also to support the work of the task force and the support given to us by the University of Nebraska Department of Criminal Justice that helped us make this recommendation for the seven probation officers.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Wehrbein, on advancement of LB 451.

SENATOR WEHRBEIN: Thank you, Mr. Speaker, members. I... I'm going to support this and I want to make some comments about it, and I will have some questions for Senator Thompson toward the end. Mostly what I wanted to call the attention to, and I... I don't want to be an ogre on this as far as the attention... the costs, the A bill, but I guess to some degree that's my job and I... I'm going to support this. But I want to recognize the fact when later on this morning we're going to have a release of our preliminary budget and I... take that home so you can look at it over the weekend and understand it. I'm not going to say a lot about it at this point except to recognize that these are the costs that are increasingly for government expenses and, as we hear the complaints about the raising of costs of government

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taxes going up, these are the areas that are...we're start...we're building programs, necessary programs in my estimation at this point. It's difficult to acknowledge but we're putting lots and lots of money into these areas. And so when people complain to you about the costs of taxes and the spending that you're going to see in this year's budget, and they're going to be in education and other areas and they're going to be in this, as we add this, this is going to be a new program that I'm sure is going to increase in costs, Senator Thompson alluded to one...another bill that's coming that I'm sure has some cost to it, tell them that we are facing societal problems and we're trying to do something about it, but that these are the costs that come with...with...as a response or mirroring what is happening in society. With that, Senator Thompson, I'd like to ask you just a couple questions, and I realize you may have...have stated this in your opening, I was distracted at the time, is the justification for seven. I know there's a...I do have a table here, I think it's table three.

SENATOR CUDABACK: Senator Thompson, will you yield, please?

SENATOR THOMPSON: Yes.

SENATOR WEHRBEIN: But are they going to be spread across the state in reaction to local caseloads, I assume? Just briefly, is the justification for seven versus two or three or five, if you would like to articulate that.

SENATOR THOMPSON: Yes. The Detention, Probation Services Task Force spent quite a bit of time trying to come up with a good number. This was not easy and...and we worked with Probation and this is our best estimate and I'll tell you how we arrived at that number. On page 8 there is a formula that was determined, and we spent quite a bit of time deciding how to determine the formula, and basically we took the number of arrests and the number of those arrests are the estimated percent needing intake detention, multiply that by two hours which is an average interview time that would be needed, and then divided it by 13...1,380, which is the total number of hours available for one officer per year. And there currently are six. This would be seven, be thirteen. Other probation

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officers, since this is 24 hours, seven days a week, are trained and cover this function, so some of the intake officers would, in the "sparsely" populated areas of the state, may have other duties assigned to them and then, on the hours they're not there, someone would be able to cover intake.

SENATOR WEHRBEIN: So they'll have a dual...

SENATOR THOMPSON: Right.

SENATOR WEHRBEIN: ...job.

SENATOR THOMPSON: Right.

SENATOR WEHRBEIN: Okay.

SENATOR THOMPSON: And the...there's more than that, that discusses that, but I...

SENATOR WEHRBEIN: I...I do...I did find that, yes.

SENATOR THOMPSON: ...I was just trying to keep it short...

SENATOR WEHRBEIN: Yeah, thank you.

SENATOR THOMPSON: ...and simple and that's basically how we arrived at that number.

SENATOR WEHRBEIN: So I...I assume then that you came...that seven is a minimum that you feel that you...is adequate to...for this expansion.

SENATOR THOMPSON: Yes. Actually, the department believes with seven and the original six that they would have the...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...capacity statewide to do this.

SENATOR WEHRBEIN: Thank you.

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SENATOR CUDABACK: Thank you, Senator Wehrbein. Senator Chambers, on the advancement of LB 451.

SENATOR CHAMBERS: Mr. President, I was just going to touch on what Senator Thompson had mentioned with reference to the inordinate number of minority youngsters who are locked up. I have talked to people in the system who have mentioned that some judges have a propensity to lock young black people up on a basis which they would not use to lock up young white children. So, rather than try to give Senator Hilgert a breakdown statistically, at another time I will share with him the information that I have which demonstrates that to be a very real and pressing problem, and it is one which is of concern to others in the court system besides just in Douglas County.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Hilgert, on the advancement of LB 451.

SENATOR HILGERT: Thank you, Mr. President. Members, the reason...one of the reasons I raised that is that...and I appreciate Senator Chambers' comments. I heard them. Oftentimes we have a study or a task force, we have an expense associated with that and then we have a result trailing behind which manifests itself in a legislative bill. Too oftentimes I think that the Legislature, at least in my humble opinion, takes these statistics and reacts to them without adequately talking and conveying to the people of the state of Nebraska that there is a reality here, that these individuals have lives, have faces, that there's actual personal instances going on and, frankly, if we're to correct a system I think it's probably healthy to talk about, at least briefly, what actually is broken down within the system. Senator Dwite Pedersen answered, frankly, my...my question in a way when he talked about his experience with the juveniles, and if Senator Pedersen would yield to a question I'd like to ask him for the opportunity to share with us a couple of the instances where you have seen individuals that are inappropriately placed and what has been the impact for not only that juvenile but the juvenile's family. I just think we should bring this home a little bit more than, you know, citing a \$100,000 study that was taken two years ago. And, Senator Dwite, if you could answer that...

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SENATOR CUDABACK: Senator Pedersen, would you yield to a question, please?

SENATOR HILGERT: ...and I'll give you the rest of my time.

SENATOR Dw. PEDERSEN: Yes, Mr. Speaker. Senator Hilgert, I will just tell you that it's not uncommon, not uncommon at all, to have young people brought to the youth center who have been picked up, especially after working hours in the evening, for such things as just being on the street and not with adult supervision, and being involved with three or four other kids and not...and the police question them, don't have a place to take them and don't have the time to look up their family, so they'll take them to the youth center. It may be a minor thing. It may be some noisemaking on the corner. It could be kids that have had a record before so they have been, basically, being watched and, because they know the kid, they'll pick...pick them up and say they're in the wrong place and bring them in. It's not just a problem of the police. It's a problem of the fact that they have no system to go through to put them in this place and it's become way too convenient for them to place them there. A bigger problem is the fact that once they get in there and they're in the wrong place, that we can't get them out. I've seen kids sit there for six, seven, eight months, up to a year before they get out of the youth center. So this is a very serious problem and misuse of them type of beds. So it's, again, it's not all the problem of just getting in there; it's once they get in there we can't get them out and them beds say full and full and full and pretty soon we've got overcrowding, we've got them coming back to the county commissioners and the county commissioner is putting it on the ballot that we need to grow again. This inappropriate placement, to begin with, locks up a bed for a long, long time, which makes all of our beds locked up in the future.

SENATOR HILGERT: Thank you. Thank you.

SENATOR CUDABACK: Thank you, Senator Hilgert. There are no further lights on. Senator Thompson, did you wish to close on the advancement?

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SENATOR THOMPSON: Yes, just quickly. I think this is a good step for the state to take and to have a way to make sure that we're doing the right thing for the kids, the right thing for their families, but also for the counties. This is one of those bills that, as Senator Wehrbein points out and we all look at, it has a fiscal impact to the state. But in the county, such as my county and Lancaster County, when...when this objective criteria is used to look at the situation, they also have an override if they feel that they need to have some other type of detention for another purpose to help, because they can't find anyone to release them to or because they have some special needs, we...we can get to a point where we are not locking kids up without the...for the...not the reasons that in statute we should be, and also saving the counties the cost of secure detention, which is expensive. Now, I used to be a county commissioner so I'd probably argue for that if I were still trying to manage that budget but, for me, this has to go...goes to a system issue, a way to improve the decision making. This isn't the only point that needs decision-making improvement, but this is one we can put in place this year, this session. There are other places within the process where other types of screening instruments and assessment instruments can be used. This is the first point in the process and I think it's a good step in terms of public policy and I urge you to advance the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. The question before the body is, shall LB 451 be advanced to E & R Initial? All in favor vote aye, opposed nay. Voting on the advancement of LB 451. Have you all voted who care to? Record, please, Mr. Clerk.

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

SENATOR CUDABACK: LB 451 does advance. Mr. Clerk, next agenda item.

ASSISTANT CLERK: Mr. President, LB 83 was introduced by Senator Brashear. (Read title.) Bill was read for the first

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time on January 4, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments attached. (AM0097, Legislative Journal page 520.)

SENATOR CUDABACK: Senator Brashear, you're recognized to open on LB 83.

SENATOR BRASHEAR: Thank you. Mr. President, members of the body, I'm introducing LB 83 on behalf of the city of Omaha. Douglas County has also expressed their support for the bill and interest in it. LB 83 relates to uncollectible costs in county court misdemeanor, traffic and juvenile cases. Court costs are determined uncollectible from a defendant when, for example, a criminal case against a defendant is dismissed. Currently, the costs of bringing the case are presumed to be paid by the county or city to the State Treasurer unless the court enters an order specifically waiving those costs. LB 83 changes existing law. If costs are determined to be uncollectible, then costs are presumed waived unless the court specifically states that such costs are to be paid by the county or city that brought the claim. The bill does not eliminate the county's and city's responsibility to pay uncollectible costs to the state, but it does require the costs be waived unless the courts specifically address such costs and that way we avoid what has heretofore been a lack of attention to this detail that results in increased collection. When the bill was originally brought to me, the loss of revenue to the state was estimated to be negligible. The most current estimates pose a significantly higher number and I realize the loss of the money to the state may be of concern. The committee amendment addresses some of that issue and I will express that when we get to the committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. As Chairman of the Judiciary Committee, you're recognized to open on the committee amendments to LB 83.

SENATOR BRASHEAR: Thank you, Mr. President, members of the body. The amendment modifies the bill by requiring that costs relating to the...to judges retirement, which is one dollar per case, and legal services, which is two dollars per case, will

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not be presumed waived. The county or city would pay those costs unless the court specifically waives them so that we are not adversely impacting the Judges' Retirement Fund or the Legal Services Fund, and we have also, by this amendment, we are reducing the fiscal impact by approximately 20-30 thousand dollars. I would urge the adoption of the committee amendment and the advancement of the bill. Thank you.

SENATOR CUDABACK: You've heard the opening on the committee amendments to LB 83. Open for discussion. Senator Beutler. Senator Beutler waives off. Senator Brashear, there are no...did you wish to close on your committee amendments? He waives. The question before the body is, shall the committee amendments be adopted to LB 83? All in favor vote aye, opposed nay. We're voting on adoption of the committee amendments to LB 83. Have you all voted who care to? Record, please, Mr. Clerk.

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments, Mr. President.

SENATOR CUDABACK: The committee amendments are adopted. Open for discussion on advancement. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, Senator Brashear, there are only 50 ways to leave your lover, but there must be 10,050 ways to shift the cost to the state, and so I...I am in favor of some of those 10,050 ways, by the way, as you know from a couple of bills that I have, but I do think it's important to...because we're so limited in funds, to be sure that, one, it's a legitimate state item and, two, that since this operates at the local level that we're not taking away incentive to collect costs at the local level. So I wanted to explore this a little bit more with you. One of the reasons, for example, that the costs would not be collected is if the state dismissed the case. The state dismissing the case involves the county attorney making a decision to dismiss a case. The county attorney is a county official. It's...it's like a county respon...county level responsibility. Why should the state pick up a cost that accrues because of an error on the part of the county attorney, if it's an error, or a judgment or

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whatever. Maybe speak to that aspect of it first and, related to that, what percentage of these relate to dismissal of a case and what percentage are...are costs that are not collectible for other reasons?

SENATOR CUDABACK: Are you asking a question, Senator Beutler?

SENATOR BEUTLER: I am asking a question, Senator Cudaback.

SENATOR CUDABACK: Would you yield, Senator Brashear?

SENATOR BRASHEAR: Yes, I will, Mr. President. Senator Beutler, I...I understand what you're saying, but I think it's theoretical. We're dealing with...we're dealing with situations, and I don't mean that to be dismissive. I really believe that what we're doing here is that when, for instance, you are arrested for, or ticketed for, not having proof of automobile insurance on your person, you then provide the proof, and the prosecutor, discretion being desirable in many cases as it relates to the relationship between the citizen and the state, dismisses the case because, in fact, you had the insurance. The only trailing detail we would have are the costs of that action. It is simply a long-established tradition that we would dismiss that case and, if we're going to dismiss that case, we don't say, oh, okay, we're going to dismiss the case but you still have to pay the costs.

SENATOR BEUTLER: Right.

SENATOR BRASHEAR: And you aren't going to collect them, and I don't think that's really an error. I mean, I understand that it could be and I know you could probably bury me in hypotheticals of where it might be in error, but I'm trying to use one that illustrates where it's simply process and it's a legitimate process to issue the ticket and it's legitimate response to dismiss the ticket, and these costs are truly incidental. And you take what otherwise would be a...what would seem or appear to be a satisfactory resolution of an issue as between the citizen and the state and you say somebody has got to pay because we've got a statute.

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SENATOR BEUTLER: And I assume that there's still incentive on the county's part to...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...try to collect costs when they can collect costs because they're losing money also if they don't collect costs still, right?

SENATOR BRASHEAR: That's exactly right. Not only are they losing costs, and I think we actually improve it with the committee amendment, which I appreciate the body adopting because now they're going...they're going to be paying three dollars more that cannot be waived. So I...I think we've got the right mix that will bring...

SENATOR BEUTLER: Well,...

SENATOR BRASHEAR: ...about attention, focus and attention.

SENATOR BEUTLER: Okay. Well, I assume the judge could still waive...could still waive it, but he's not going to waive his own retirement.

SENATOR BRASHEAR: (Laugh)

SENATOR BEUTLER: All right.

SENATOR BRASHEAR: I can't think of the right...

SENATOR CUDABACK: Senator...

SENATOR BRASHEAR: ...rejoinder, so I'll let it go.

SENATOR BEUTLER: (Laugh)

SENATOR CUDABACK: Was that a question, Senator Beutler?

SENATOR BEUTLER: No, it isn't. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Seeing no

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further lights, we are discussing advancement of LB 83. Senator Brashear, did you wish to close?

SENATOR BRASHEAR: Mr. President, members of the body, I just...I appreciate Senator Beutler asking those questions. I think it elaborates on the record exactly what we're doing. I think it shows the good purpose of the bill. I appreciate the adoption of the committee amendment, which is an improvement. I would urge the advancement. Thank you.

SENATOR CUDABACK: You've heard the closing on advancement of LB 83. The question before the body is, shall LB 83 be advanced to E & R Initial? All in favor vote aye, opposed nay. We are voting on advancement of LB 83. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB 83.

SENATOR CUDABACK: Items for the record, Mr. Clerk?

CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB 25, LB 25A, LB 46, LB 48, LB 133, LB 152, LB 152A, LB 193, LB 238, LB 238A, LB 269, LB 337, and LB 409 all correctly engrossed. A new A bill, Mr. President, LB 549A by Senator Byars. (Read by title for the first time.) And Senator Suttle has an amendment to LB 23 to be printed. That's all that I had, Mr. President. (Legislative Journal pages 768-770.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Next agenda item.

CLERK: Mr. President, LB 154, a bill by Senator Chambers. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0147, Legislative Journal page 520.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on the advancement of LB 154.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I

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will be very brief in my opening because the amendments will become the bill. The Ombudsman had been getting many complaints from inmates, I had been getting many complaints, Senator Dwite Pedersen and others of you, based on inappropriate, inadequate medical treatment. So the Ombudsman's Office did a very thorough, detailed inquiry, interviewing employees, inmates and others. A report was produced which rubbed some people in Corrections the wrong way, meaning that they were dissatisfied and upset about some things contained in the report. The Governor, based on the publicity that was swirling around this report and the issues raised therein, appointed a task force. I will not give the names of all of the people, but they were highly respected in the community, from the medical area there was a former Chief Justice and people of that caliber so that whatever report they produced it would have an air of credibility which would allow the public to feel confident that a serious effort had been undertaken. To the surprise of some, but not to others, the findings of the task force, to a great extent, mirrored the findings made by the Ombudsman's Office. There were numerous recommendations made based on those findings as to how inmate medical care could be improved. I worked with the Ombudsman to craft some legislation; this was introduced. If you want to look on your gadget, you can see the people who testified in favor of the bill. One thing I will tell you even before we get to the committee amendments is that the original bill would have created a medical authority which was in a sense another layer of bureaucracy, just to be very blunt and not try to prettify anything. Some of what it was supposed to do, is already being done in some instances, is prepared to be done in others, and that authority would have been housed in HHS, I believe. There was a complexity, an overlapping and perhaps, being quite frank, the unnecessary creation of another layer of bureaucracy, so I readily agreed to strip that from the bill. But before I go into much more about the form that the bill will take with the committee amendments, I will let that serve as my opening and introduction and first step toward compiling a record for this bill.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on the advancement of LB 154. Senator Brashear, as Chairman of the Judiciary Committee, you're recognized to open

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on the committee amendments.

SENATOR BRASHEAR: Thank you, Mr. President and members of the body. The committee amendment essentially replaces the bill, but certainly not all the substance of the bill. The amendment preserves the original, but it strikes the section creating the Nebraska Correctional Medical Authority and the corollary sections that establish the authority and its duties, Sections 14 through 18 of the original bill. The striking of the sections regarding the Medical Authority was done to avoid a duplication in bureaucratic supervision as the Department of Health and Human Services has regulatory authority over the licensed healthcare professionals in the prison system, of course, as it exists. The amendment also changes the language regarding pharmaceutical care. The changes are essentially technical, they are clean-up, and they are done to make the relevant provisions, use the appropriate terminology that the profession utilizes. Further, the amendment specifies that the Division of Medical Services is to develop and implement condition-specific medical treatment protocols for gender-specific health problems and gender-specific routine healthcare services within the Department of Corrections. I trust we all recognize the desirability of insisting upon gender-specific protocols. Finally, the amendment requires the division, in developing its internal credentialing program, to confirm all professional permits, licenses or other authorization of each current healthcare staff member, by checking with the appropriate licensing or certifying agency. Obviously, good practice. That summarizes the committee amendment. These were improvements which we're making to the bill. I would urge the adoption of the amendment and the advancement of the bill. Thank you.

SENATOR CUDABACK: You've heard the opening on the committee amendments to LB 154. Open for discussion. Senator Chambers. Senator.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I was somewhat distracted, so I don't know to what extent Senator Brashear went into the details of the committee amendment. But I'm going to mention a few items so that it will

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be clear the extent of work that was done and the types of things that are being put into statute. I have talked to Senator... I meant Director Harold Clarke and we've had a number of conversations. I've talked to people who represent the Governor's administration, and every place where they made a recommendation I accepted it as long as it did not impair what we're trying to do. And it should be kept in mind that, despite the numerous provisions in this bill, the various treatment protocols, the clinics that are being established, the medical staff who will be trained and assigned, there is one simple goal to be achieved. That goal is to see that people who are locked up in these institutions are treated with respect, human decency and accorded the medical care that any person is entitled to expect. Especially must we be careful to do this because these people are under the jurisdiction of the state, they're being held in custody, they're not free to seek medical care of their choice, so there are certain fundamental and basic provisions we ought to make. By the way, Senators Pedersen and Aguilar, Senator Dwite Pedersen, are on this bill also. If you want to look at this amendment, on page 2 there is discussion of the division of medical service. That, based on an amendment which I will offer on Select File, is going to be eliminated, too. The assistant medical director position is going to be eliminated also. In place there will be a medical director appointed by the Director of Corrections, who will answer to the Director of Corrections. So when you see this other amendment that I will offer on Select, it will seem to be removing a lot of the bill, but all it's doing is removing that division and the position of assistant medical director. And, naturally, where there are certain duties assigned to that division or the medical director, they will be stricken. But all of those services will be absorbed, all of the activities required to be performed by the division or the assistant director will be taken care of when that position is removed. On page 3, you will see, in line 14, beginning there, a discussion of medical treatment protocols and what will be entailed. Some of these I want to put into the record because they are areas of concern that we would all have: gastrointestinal bleeds, communicable diseases, gender-specific problems. Unfortunately the female inmates are still being grossly ignored and deprived of help of a medical and other types, which should make us all ashamed.

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And I'm hoping that once this bill becomes law we will see if the department is going to act in good faith and do what is to be done to provide this equality of quality medical care that does have to meet community standards. There will be an...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...an evaluation of the surgical procedures, there will be age-specific, as well as gender-specific routine health maintenance. We will make sure that inmates can obtain access to these healthcare services, because it does us no good to provide for them if the inmates cannot have access to them. We will make sure that prescribed drugs, devices or biologicals for the purpose of pain management will be available and administered as they should. Those are a few of the items that I think need to be put in the record. I'm going to turn on my light again so I can continue along this line. Then, if you have any questions, naturally I will answer them.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On the discussion of committee amendments to LB 154, senators wishing to speak Senator Stuhr, Beutler, Suttle, Dwite Pedersen, Wehrbein and Chambers. Senator Stuhr, you are recognized.

SENATOR STUHR: Thank you, Mr. President and members of the body. First of all, I stand in support of this bill and want to thank Senator Chambers for bringing this forward. As many of you know, the York or the correction...Women's Correctional Center is located in my district. And I receive numerous letters and have had great concern about some of the conditions that have taken place in this facility. So I again just thank Senator Chambers for bringing this, because I think that it does address many of the concerns that I have personally have had in regards to the facilities and the protocol that has been taking place. I would like to ask Senator Chambers a question. Senator, when...since you...we are removing the assistant director, is there someone in charge then at these different institutions that will oversee the healthcare needs?

SENATOR CUDABACK: Senator Chambers, will you yield, please?

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SENATOR CHAMBERS: Yes. And as I proceed with my discussion, Senator Stuhr, I'm going to point your attention to a place in the committee amendment where we discuss the assignment of medical persons to each one of these facilities. If the facility has more than 500 inmates, there will have to be a medical doctor on staff, otherwise there will have to be that level of capability on 24-hour call to be available. But we don't want there to be any other instances of unattended inmates because they see we don't have anybody available who can respond. And, if the body wants to tighten that, I'm not opposed to any amendments of that kind.

SENATOR STUHR: Okay. Thank you very much. Again, I think this is an issue that was brought out earlier that I think there were many concerns. We've had a task force and so I am very pleased that we now have something before the body that will address this very serious concern. And I will turn the remaining of my time to Senator Chambers. Thank you.

SENATOR CHAMBERS: I...

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Yes. I'm going to accept the time that Senator Stuhr gave me and thank her for it. What I was looking for can be found on page 4 of the committee amendment, starting in line 27. And I'll read from it, and it will be in the record because I was going to get to it anyway. In assigning healthcare staff to the correctional facilities under the control of the department, there will be a medical director who will replace this division, Senator Stuhr. The medical director shall ensure that each facility has at least one designated medical doctor on-call at all times, and that each facility housing more than 500 inmates has at least one full-time medical doctor assigned to that facility as his or her primary employment location. So when we assign a medical doctor to any facility, that doctor cannot make that a part-time avocation. That will have to be the primary job site of that particular medical person. Along the line of what Senator Stuhr was talking about in terms of what we will try to provide, and if

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this bill is passed what we shall provide, there will be the establishment of an acute care clinic...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...in each of the correctional facilities, and there will be the adequate staffing necessary to administer such clinics. There will be chronic care clinics, those that will deal with human immunodeficiency virus infection, or HIV, AIDS will be dealt with. And then the treatment protocols relating to all of these clinics, all of the medical services that are offered will have to be based on the community standard of health care. So they cannot say in the Department of Corrections that the inmates are going to be accorded a lesser level of health care than those people on the outside, in the so-called free world. When they're setting up these protocols there will even be some consultation with inmates...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...or an inmate spokesperson. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Stuhr. Senator Beutler, followed by Senators Suttle, Dwite Pedersen, Wehrbein, Chambers and Aguilar. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, Senator Chambers, I'd like to ask you just to elaborate on one central concept in the bill.

SENATOR CUDABACK: Senator Chambers.

SENATOR BEUTLER: Notwithstanding all our deficiencies in this particular area, we're all going to have constituents who are...some constituents who are going to respond to this sort of thing by saying look how good we're making things for prisoners, for people who have violated the law. And they're going to say, you know, we give them TV sets, now we're giving them all this great medical care. The central concept, I think, upon which the medical care is based is the idea of a community standard of health care, community standard of health care.

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SENATOR CHAMBERS: Yes.

SENATOR BEUTLER: And that's the concept that I wanted to ask you to elaborate on and elaborate on it in this context, when people come to us and say, look, you're giving them this high quality health care now, and their children and their spouses who they've left out in society without protection, they can't even get that level of health care. And there are other poor people in society and new immigrants who can't get that community...community standard of health care, and yet we're giving it to the prisoners who have violated the law. So my question to you is this, first of all, are they being given better health care than those people that I just described; and if they are not, then explain that in terms of the community standard of care that's in the bill. And if they are, how do we respond to our constituents who say, why is it they get better care than their children who they left in society to fend for themselves?

SENATOR CHAMBERS: Okay. And, Senator Beutler, I'm not going to be evasive, but we have to start with the premise that there can be no cruel or unusual punishment meted out to any person at the hands of the state. When a person is locked up and placed in the custody of the state, there are certain standards of treatment that the Constitution of the United States, of the state of Nebraska, and, in some cases, statutes, require be provided to those people. They have lost their freedom and since they are in the custody of the state there are certain standards that must be met. So when you talk about the community standard, it means that standard of medical care which pertains out in the free world, so to speak. And I guess you'd have to look at least area of medical care, if it's HIV, if it's AIDs, if it diabetes, whatever the medical profession or the professionals have established as being the required level of competency and care that must be administered to avoid committing medical malpractice. That is the standard that has to be maintained in the prisons. I don't want to be facetious, but many of these people will get better care in the institution than they had on the outside, because they couldn't afford it either. But once they fall into the clutches of the state, the

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denial of adequate medical care, and that standard is the community standard, a person could go into court and obtain a court order, if we wanted to make each inmate do that with reference to each case, and the state would be compelled to provide that inmate the level of medical care which is required. So there is no question but what some people who are locked up in prison have access to medical care which their family on the outside does not have,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...families situated as their families do not have and which they themselves would not have. So in a sense this is based on what our responsibility as the state happens to be.

SENATOR BEUTLER: Senator, I thank you for that explanation. And as I understand your explanation, the community standard of care is basically required by the cruel and unusual punishment section of the United States Constitution. And I think it's kind of a sad reflection on our society that the courts would say that it's cruel and unusual punishment in this case not to give that level of medical care, and yet our society goes on not giving that level of care to a lot of people who are free people and haven't violated the law, but they can't get access to this kind of care. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Chambers. Senator Suttle, on the committee amendments to LB 154.

SENATOR SUTTLE: Thank you, Mr. President, members of the Legislature. I also have received letters from inmates, especially from York. The women there are not receiving care. And I must tell you that if they receive preventative medical care it will be cheaper in the long run for the state of Nebraska to, if they would go ahead and use the time that they have these people there to prevent illness, in the long run it's going to be cheaper for the state of Nebraska. These women that wrote to me from York complained about real serious issues that weren't addressed. And the longer these things are not

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addressed, the more expensive it becomes for the state to finally cure or take care of these things. The longer that you don't examine a lump in the breast, the longer...the more possibility that this could be cancerous, and the bigger the bill is going to be. If you don't check with...if you do not take care of things early and even prevent them, it's going to cost us more and we're going to get sued at some point if we don't start taking care of these people in a way that the constitution tells us we must. And prevention is absolutely the cheapest way to go about taking care of these inmates. And it's also the most humane and in the long run it will be cheaper for the state of Nebraska. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Suttle. Senator Dwite Pedersen, on the committee amendments.

SENATOR DW. PEDERSEN: Thank you, Mr. President and members of the Legislature. I know one of the first things that comes up is people say these people are locked up, they don't deserve what we on the streets have. What I'm asking you people that would have any questions with this whatsoever is to please read the original Ombudsman's report and then read the report or the findings that the task force put out; they are very much alike. I'm not going to stand here before you and tell you there's not people who in these situations don't get in the sick call line when they're not sick. When we got them in places that we're not doing anything else with them, they're standing out there doing nothing else, that happens from time to time. But the cases I'm asking you to look at are blatant, blatant "miscare" and misdiagnosis of medical problems. One of the things that came up in the task force when it was working, one of the questions was that somebody from Corrections had stated to the task force and they said, we're talking about cost. And the person from Corrections was emphasizing the fact that the taxpayer has to pay for all of this medical care. I testified next after that person and I said the taxpayer also pays for all of the lawsuits that are lost, and we have had them where inmates have filed lawsuits and have won them on medical cases. We pay that, too. We can't not afford to give them basic, good medical care. The people we have, because of what we've paid for medical care in the past, we've ended up with less than

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desirable people, not all of them but a few, who couldn't get hired in other places and got hired in Corrections because of what they paid. And they couldn't get the ones who were good because of what they...what they needed for pay. All of this came out in this task force; all of it had been reported in the Ombudsman's report. You owe it to yourselves, if you have a question about the medical care, to look and see what the problems were and we'll support this as a solution. It's not all that I wanted. I would have liked to have seen the outside supervision, but I agree with what Senator Chambers has agreed on and the chairman and the rest of the Committee on Judiciary, that I sit on, that...that will take a look at having the Health and Human Services director...medical director supervise this, and if it doesn't work, we'll come back next year. As you know, I am one of the ones who choose to work in this area, and I will be keeping my eyes on it. If there's any questions you have of me about these reports that I could answer for you, I'd be more than glad to try and do that. Thank you. Please support LB 154.

SENATOR CUDABACK: Thank you, Senator Dwite Pedersen. Senator Wehrbein, on the committee amendments.

SENATOR WEHRBEIN: Thank you, Senator Cudaback. Members of the body, I'm going to take this opportunity to, first of all, note on your desks, a preliminary report that's due to the body from the Appropriations Committee, it's the purple sheet, if you will, this year. And I want to call your attention also to...and I won't...I'll answer questions, if you have, in time about that. You can read that over and draw your own inference. I hope it's very clear. On this particular bill, there is an issue, and that's on page 17. There is...of this report that I handed out, has to do with the Governor's proposal which is Corrections medical staffing. It's one of the ten major...one of the major differences between us and the Governor. The Governor had proposed, in this area, \$538,000 a year; we did not have that in yet. This bill, in other words, will carry itself. I think there's going to be some resolution necessary between the two bills when this amendment passes, that I understand, which does become the main bill. There is approximately \$1 million in right now. I think there will be some differences

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to work out as this bill progresses through, as we see how that meshes with the Governor's proposal. I simply wanted you to know that there's...there won't be, when we're done, a duplication. I will support this bill as it's going through, recognizing that there is a significant cost. That's all I want to call the attention of the body. If you notice then in our preliminary report, we do not have it in, so the A bill, as this will go forward and is resolved in whatever it will be, May, will resolve itself so that there won't be duplication. We'll have that to work through as we see how the bill works itself through this system and if there's amendments and so forth. I just wanted you to know there will not be a duplication and it is not going to be double appropriated at this time. That's the only specific issue I will pick up on in the...in the...this Appropriations Committee preliminary report that we're due out today. Mr. Speaker, that's all the time that I will need on this, and if there's questions I will answer them privately. Everyone has it. I recommend that you look at it carefully over the weekend and have questions, talk to us or the Fiscal Office, which are the real experts in this area. Thank you.

SENATOR CUDABACK: Thank you, Senator Wehrbein for the report. Senator Chambers, on the committee amendments.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, the Squire kind of jumped the gun and stole my thunder (laugh). The thing I was going to mention was the fiscal note. With the elimination of that medical authority and the elimination of the creation of this division within Corrections, that's almost \$500,000 that will be taken out of LB 154. And I am willing and I think we must, as Senator Wehrbein pointed out, work together to make sure that there is no double-dipping, because that is not my intent, it is not Appropriations intent, it is not the Governor's Office intent. But until we get a final form of this bill to look at so that the fiscal note can be redrawn, we will not know precisely the amount of money involved. But what I will make very clear this morning is my intent to fight for this bill. I have granted many concessions to the Governor's administration, not just as a favor to the Governor or to Director Clarke, but because the recommendations were very reasonable. What we do not want to

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get is a bill which is cumbersome. We do not want to create a bureaucracy which is so complex that in trying to maneuver and manipulate the bureaucracy we lose the purpose of the legislation. My purpose, I'll state it again, is to ensure that the level of medical care is provided to inmates which is required, and I hate to say just by the law, I'd like to say our sense of decency and responsibility. But whatever the motivation is, we have to provide this medical care. The good thing that can grow out of all the contentiousness that developed as a result of the Ombudsman releasing that highly critical but accurate report is a bill such as this. We had at least one doctor testify for the bill and make recommendations which were incorporated into the committee amendments. He testified in favor of the bill, he gave whatever information the committee needed about their procedures. I don't remember his testimony in detail. But the ones involved from the beginning have known about this bill, have contributed to it and are aware of what it is that we're doing. That's why I want to make it clear that no question that's put to me on the floor is going to offend me in the least, no challenge that somebody might make to determine whether a particular element of the bill is necessary is going to offend me, none of that. We want a bill that is well written. We already know that it follows the blueprint laid out first by the Ombudsman's report, followed up by the report of the Governor's Task Force. So, in substance we have it as we need it. But for the polishing, the fine tuning, maybe additional safeguards are needed to take care of the interests of Senator Stuhr and those expressed by Senator Suttle relative to the treatment of the female inmates at York. We want all of those issues to be properly and equitably handled. I will not speak on the bill again until my closing, unless somebody has a question or a series of questions. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) Senator Aguilar, on the committee amendments to LB 154.

SENATOR AGUILAR: Thank you, Mr. President. Members of the body, I also rise in support of this bill and I want to thank Senator Chambers for bringing it forward and thank Senator Pedersen for all the work he's done with this and in this area.

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I do think this is something we need, I think it's important, as Senator Chambers stated. I do get a lot of correspondence from inmates talking about the problem that goes on with lack of medical healthcare. I'd like to ask Senator Chambers a question, if I could, in that regard.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Yes.

SENATOR AGUILAR: Senator Chambers, have you ever received any correspondence from an inmate who might have asserted that inmates have actually died while incarcerated out there because of lack of medical health care?

SENATOR CHAMBERS: Yes, I've had allegations such as that made to me, right.

SENATOR AGUILAR: As well as I have, and I simply bring that question up so that the body can get a full understanding of just how important and critical this issue is. With that, I ask for your support of this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Aguilar. Senator Jensen, on the committee amendments to LB 154.

SENATOR JENSEN: Thank you, Mr. Chairman and members of the body. Senator Chambers, would you reply to a question, please?

SENATOR CUDABACK: Senator Chambers, will you yield, please?

SENATOR CHAMBERS: Yes, I will, fellow old-timer (laughter). That's kind of inside thing between him and me, based on what he did to me the other day.

SENATOR JENSEN: Okay, I'll admit to that, too.

SENATOR CHAMBERS: (Laughing) Okay.

SENATOR JENSEN: We...we have been talking generally about medical. What about mental health of some of the citizens out

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there? We've received some correspondence from some individuals, my staff have followed up, even gone out to the prison, and it didn't take a lot of evaluation to determine that there was this individual that we were writing to and corresponding to really had a mental problem and because of that he was lashing out, and then of course he received severe treatment for that. And so within this, can we address those issues also?

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Senator Jensen, I'm glad that you raised that issue because you have worked in that area, you are right now trying to make sure that some of that tobacco money will go to the treatment of people who have mental health problems. What I would hope you will do is look at the committee amendments, and I think you'll see there is nothing pertaining specifically to mental health. And I would like to work with you to see that we put something in the bill. But if I brought it up, then I, who speak against Christmas trees, may be viewed as Santa Claus, not building a tree, but coming with many gifts. It is a very serious area because I would venture to say that if you gave a test, a psychological test to all of the people who are locked up, 99 percent, if not a greater percentage, would be shown to have an identifiable mental deficiency of some kind, I don't mean they cannot function, but where there is something amiss which could be rectified and assisted with counseling. In other cases, medication may be necessary; in others, more intensive counseling. But it's an area that I don't believe the bill adequately addresses, but I would like to see it do that.

SENATOR JENSEN: Thank you. I was reading through the amendment and I just didn't see any reference to that, and so maybe now, between now and Select File, we might take a look at that. Thank you, Mr. Chair...Chairman. I'll return the rest of the time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. President. Members of the

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Legislature, I want to respond just a little bit to what Senator Jensen was just talking about. Most of you have heard of a term called "the hole". "The hole", according to Corrections, their terminology, is a control unit. This is a portion of the prison that is used to discipline those who have acted out the most. They have some other units that they use for segregation and for punishment, but those who have acted out the most go to the control unit, or most commonly known on the street as "the hole", the prisoners call it the "the hole". I will tell you that in the visits that I make to prison, and most of you know that I visit prison at least four hours every two weeks, going to "the hole" is a very sad place to go and not because of those people that are being disciplined, but because of the ones that are down there, and not all of them, but there's a few in every one of them I've been to, especially out at the Lincoln Correctional Center, where I've gone to the most, are people with mental health problems, serious, serious mental health problems. There was a young man out there that I will refer to as John Doe. John, when I first went to visit him, was asked to by him many times by mail, first went to visit him I was shocked at how many years he'd already been in "the hole". He'd been in "the hole" for over two and a half to three years. He spent three and a half years in "the hole". What I'm going to say is not pretty, but I'm going to say it out loud. This man played with his feces; he cut his stomach open, would take his feces and rub it in the cuts; he ate his glasses, he swallowed razor blades. And the treatment he got was "the hole". And that isn't prison's fault; I'm not dumping this on Department of Corrections. Department...what I'm saying is they don't know how to handle these kind of people; and when they act out like that, this is where they put them. This young man spent most of his time in a pair of paper boxer shorts because of being scared of tearing up his clothing and hanging himself or maybe consuming them. He was given a suicide blanket many, many days. A suicide blanket is a blanket that even two elephants couldn't pull apart and tear up. And he slept on a cement floor many, many nights with nothing but a suicide blanket. This is one case, there are more and some more gross. They don't know how to handle these people. They aren't trained to handle these kind of people. This is what happens when we close our mental health beds and when we don't spend money on mental health, they

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go out on the street and act up and they are arrested and taken into our correctional system. We have them in our county jails and we have them in prison. And it's very, very hard to get somebody transferred from the correctional system over to the Regional Center. And sometimes when it does...when we do finally get enough people involved and want to get them moved there's not a bed available. So I'm standing up here to tell you a little bit about what goes on in that area that Senator Jensen was talking about and also to say...to speak for the bills that we'll be having coming up on mental health--severely lacking. And, yes, they have mental health in Corrections, but they don't have the type of mental health to take care of these kind of people. And they do what they know how to do best and that is to lock them down and put them under more supervision and take away those things that will hurt them. They're not trained in treatment. And the few people they do have in this area...

SENATOR CUDABACK: One minute.

SENATOR Dw. PEDERSEN: ...cannot anywhere come close to treating those that need it. Thank you.

SENATOR CUDABACK: Thank you, Senator Dwite Pedersen. Senator Brashear, there are no further lights; did you wish to close on the committee amendments to LB 154?

SENATOR BRASHEAR: Mr. President, members of the body, just to...just to review. We are...the changes which are made in this bill relate to some technical things in terms of, for instance, pharmaceutical care; we've inserted appropriate terminology with regard to medical authority; we're putting the Department of Health and Human Services where it ought to be; we did add the gender-specific requirement language which we believe is very important, and we also are requiring internal credentialing and a confirmation of credentials for those who exist. I would urge the adoption of the committee amendments. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the closing on the committee amendments to LB 154. The question

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before the body is, shall the committee amendments be adopted? All in favor vote aye, opposed nay. Voting on the committee amendments to LB 154. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR JENSEN: The committee amendments are adopted. We're back on discussing the advancement to E & R Initial. Seeing no lights, Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I appreciate those who spoke on this bill and I want to again say how much I appreciate Senator Jensen's raising the question of mental health. That is something that needs to be addressed. And this, I think, is an ideal time and this bill is the ideal vehicle. There is the focus, there has been a shown need for it, and I believe that money is available to do this. We can spend over \$80 million to build a prison, we can spend \$1 million, \$2 million, \$3 million if necessary to take care of the needs of the people who were put there. Not only do we help the inmates, but we contribute to the good order of the institution, we will provide a safer environment for the staff who must work there. Moralists, philosophers, others have said that you can determine the level of civility of a civilization and society by the way it treats or mistreats its prisoners. Senator Beutler made what I think is a very, very telling point. There will be under this bill the mandated providing of medical care that ought to be provided. And we should not say that to make what is happening in the prison, as far as medical care and that which is going on the outside with reference to some of our citizens, we should not say to bring about equality we will deprive the inmates of that care to which they are entitled. We should instead be working to provide to our citizens that which they should have. So, let us make the medical services in the prisons the paradigm or the exemplar of what we as a society think would be the minimum standard of healthcare which no citizen should fall below. And we can even argue that it's regrettable we have to turn to the prisons for that example, but it will show that we at least took care of our direct

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responsibility to the people whom we have incarcerated, then we can argue from that that a person should not say, if I want medical treatment I should go hit somebody in the head with a stick and hope the stick is big enough and the damage is severe enough for it to be a felony, and I can go to prison and get some medical care. That should not even be available to be said in jest. Unfortunately, with the passage of this bill it can be said in seriousness. So I hope this bill is a step in the right direction in providing medical and mental treatment for those we lock up, and will be a step in the direction of making sure that all the citizens in this society have access to medical and mental healthcare. And, Mr. President, that's all that I have to say. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the closing on the advancement of LB 154. The question before the body is, shall LB 154 be advanced to E & R Initial? All in favor vote aye, opposed nay. We're voting on the advancement of LB 154A (sic). Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB 154.

SENATOR CUDABACK: LB 154 does advance. Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 213 is a bill by Senator Jensen. (Read title.) Bill was introduced on January 4, referred to the Health and Human Services Committee, advanced to General File. I have no amendments to the bill.

SENATOR CUDABACK: Senator Jensen, you're recognized to open on LB 213.

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. LB 213 would simply allow the Department of Health and Human Services Regulation and Licensure to impose intermediate sanctions of childcare providers licensed by the department. When the department serves a written charge or a license...on a license provider or allegedly violating a rule or

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regulation or an order of the department, the only options of the department are currently to suspend or revoke the provider's license. LB 213 would allow the department to assess a civil penalty of up to \$5 per child per day based on the license capacity of the program on the date the alleged violation was cited. The department could also restrict new enrollment to the program, or place other limitations on the provider's license, such as reducing the number of individuals at the provider's location. Those same sanctions could also be imposed if periodic reviews or inspections by the department indicated that there hasn't been sufficient progress by the provider towards compliance. This bill still allows the department to go ahead with a revocation or other disciplinary action even if an intermediate sanction has been imposed, but the bill provides the department may choose not to accept a voluntary surrender of a provider's license during an investigation of the provider for alleged violations. There was no opposition to the bill. The bill was advanced unanimously by the committee and there is no fiscal impact to the bill. It simply gives more flexibility to the department in employing of sanctions less severe than total revocation or suspension of a provider's license. I would ask for the advancement of LB 213 to E & R Initial. Thank you, Mr. President.

SENATOR CUDABACK: We're open for discussion on advancement of LB 213. Seeing no lights, Senator Jensen. Excuse me, Senator Beutler's light was on. I didn't look down. I'm sorry. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Jensen, let me just throw out something to you that doesn't seem quite right to me and...and it may be because I don't understand the process thoroughly enough, but looking on page 3 of the bill, there is some new language inserted there and it's inserted under the section which deals with a charge. And a charge can be made of a violation of a rule or regulation or of a provision of statute, and you need to specify what the charge is and what the alleged facts are, and then it says on such basis, on the basis of the charge alone apparently, the provisional, probational or operating license may be suspended or revoked. Okay, I'm okay with this at this point. But then

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it goes on to say a civil penalty may be assessed for each day the program is in violation, and then it goes on with some more new things that can be done. Those things that are being itemized do all seem appropriate to me once there has been a hearing and the alleged charges become proven facts, but my question would be, in this particular portion, where the new language is inserted on the basis of a charge alone, why is it we would want to allow the department to assess somebody a civil penalty on the basis of an allegation alone, for example? I mean I see on the basis of a charge that it certainly would be necessary, in some instances for the protection of kids, to immediately suspend and revoke the license...or revoke the...well, immediately suspend the license. In fact, I don't know why they should be allowed to revoke a license at that stage, personally. I guess I'm trying to get a feel for the way this law is meant to operate, but the more I look at this charge section the more I'm wondering whether some of the current law isn't inappropriate. But I would, first of all, invite your response in case I'm missing out on how this is all structured.

SENATOR CUDABACK: Senator Jensen, would you respond, please?

SENATOR JENSEN: Senator, I do see what you mean there where it says a charge shall be specified, and we're not changing that. That...that was in the existing law. Actually, what the bill was really talking about was a lesser imposition or a fine, \$5 a day per child until they bring something up, but it was not...I can understand what you're saying. I'd sure be glad to look at that, particularly between now and Select File, and see if that is proper that we do a charge without them being able to respond. There are certain cases where there's endangerment of child.

SENATOR BEUTLER: Right.

SENATOR JENSEN: That needs immediate action.

SENATOR BEUTLER: Right, and maybe ask the question also of whether revocation, which is in current law, is appropriate at that stage as opposed to a suspension until the matter is resolved. But also, Senator, if you would, this...this same set

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of things is apparently put in the statute in three different places. One of it has to do with the charge, and we've talked about that. At the top of page 4, the same set of penalties is inserted on the basis of a periodic inspection that indicates that insufficient progress has been made towards compliance. I find that a little bit confusing too because I don't understand whether that again relates to some alleged fact or some proven fact.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: And I assume that the requirement towards progress probably has to do with a decision made earlier in an earlier violation that has been proven, but, nonetheless, my question would be isn't that also alleged at that point in time and is it necessary and appropriate to put something like a civil penalty in there, again, on something that's alleged and not proven yet, if you understand my point?

SENATOR CUDABACK: Senator.

SENATOR JENSEN: I understand what you're...you're saying. This is where they've actually made a recommendation and then they come back and check and find out that it hasn't been followed through, and so there would be an assessment at that time. These...these inspections are made...we used to require that they be made periodically. Now they're made...

SENATOR CUDABACK: Time.

SENATOR JENSEN: ...unannounced.

SENATOR CUDABACK: Senator Beutler, your light is next.

SENATOR JENSEN: They are made unannounced and so then if they do determine that there is a problem they would come back and do a reinspection to make sure that it is taken care of. And, in that case, if it hadn't been, why, then they could, again, impose this \$5 assessment, which would be a civil penalty. And I suppose they would come back then even a third time to make sure that that had been taken care of.

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SENATOR BEUTLER: Well, Senator, let me...let me stop there and try to improve my understanding before Select File and indicate to you and the rest of the body that I certainly think what's being done is most certainly helpful in terms of proven violations and maybe...and maybe the other, but I would like to hear more about it. Thank you

SENATOR JENSEN: I'll certainly examine this and we'll be visiting before Select File and come up with answers to your questions.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Jensen. There are no further lights on. Senator Jensen, did you wish to close? Senator Jensen waives closing. The question before the body is, shall LB 213 be advanced to E & R Initial? All in favor vote aye, opposed nay. Have you all voted who care to? Record, please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 213.

SENATOR CUDABACK: LB 213 does advance. Mr. Clerk, items for the record.

CLERK: Mr. President, Enrollment and Review reports LB 97, LB 97A, LB 226, LB 250, LB 253, LB 280, LB 299, LB 346, LB 346A as correctly engrossed. Hearing notices, Mr. President, a series of hearing notices from the Appropriations Committee, signed by Senator Wehrbein, as Chair. The Agriculture Committee, I believe, has a notice of hearing, signed by Senator Dierks, as Chair. Amendments to be printed: Senator Thompson to LB 287; Senator Landis, LB 433; Senator Robak to LB 827; Senator Wickersham to LB 433. And the last item, Mr. President, is a...the report of registered lobbyists for this week. That's all that I have. (Legislative Journal pages 771-776.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) Senator Coordsen, for a motion.

SENATOR COORDSEN: Mr. President, I move that we adjourn until

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Monday, February 26, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn. All in favor say aye. Opposed nay. We are adjourned, and please drive carefully; it is icy out.

Proofed by: Kathleen Higley